

# **NORTH DAKOTA ADMINISTRATIVE CODE**

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## TABLE OF CONTENTS

State Board of Animal Health.....	393
State Board of Pharmacy.....	399
Department of Human Services .....	403



**TITLE 48**  
**STATE BOARD OF ANIMAL HEALTH**





## **JANUARY 2011**

### **CHAPTER 48-09-01**

**48-09-01-02. Brand inspection.** For the purpose of complying with North Dakota Century Code chapters 36-05, 36-09, and 36-22:

1. When cattle, horses, or mules are offered for sale at any brand inspection point, proof of ownership must be established by the shipper of the cattle, horses, or mules, either by a recorded brand, bill of sale, livestock market clearance, local inspection certificate, or an affidavit of ownership.
2. If any animal inspected bears the recorded brand of the shipper or seller and also bears a recorded brand or brands other than the recorded brand of the shipper or seller, then the said shipper or seller may be required, at the discretion of the brand inspector, to establish ownership of such animal by bills of sale, market clearance, local inspection certificate, or any other satisfactory evidence of ownership.
3. No claim for feed, pasture, or gathering shall be allowed at market. All such claims must be referred to and approved for payment from proceeds of sale by the North Dakota stockmen's association, unless payment is authorized in writing by the owner of the brand carried by such livestock.
4. Sales agency, packing plant, and buying stations where inspection is maintained must furnish necessary help without charge to assist the brand inspectors in handling cattle, horses, or mules to be inspected for brands.
5. All cattle, horses, or mules entering an inspection point shall be placed in pens assigned to individual sellers and shall be kept separate from all other cattle, horses, or mules until inspected by the brand inspector and released for sale or shipment.
6. No cattle, horses, or mules shall be inspected after dark or by artificial light or inspected when loaded in trucks; provided, however, that under

emergency circumstances deemed by the brand inspector to warrant inspection by artificial light, such inspection may be made at places designated by the chief brand inspector as having lighting which meets the specifications required by the chief brand inspector for inspection by artificial light. The chief brand inspector shall have authority to give approval to premises which meet such specifications and to extend or remove such approval.

7. It shall be the responsibility of the North Dakota stockmen's association to provide a sufficient and competent force of brand inspectors at inspection points to carry on the brand inspection in an efficient and timely manner.
8. Brand inspectors may not inspect their own livestock or trade at a market where they conduct inspections.
9. A buying station is a point where cattle, horses, or mules are gathered for sale and is also referred to as a weigh station or scale.
10. The North Dakota stockmen's association shall, when determined advisable by the chief brand inspector, make an inspection of any butcher shop, buying station, locker plant, or custom meat cutting and processing establishment where cattle are slaughtered or processed for the owner for a fee. Authorized inspectors of the association, when directed to do so by the chief brand inspector, shall be authorized to go upon the premises of any such butcher shop, buying station, locker plant, or custom meat cutting establishment, for the purpose of making physical inspection on the premises as to the ownership or identity of animals or their carcasses that may be found therein.
11. A fee of ~~seventy-five cents~~ one dollar per head on all cattle, horses, or mules subject to brand inspection at points where such inspection is maintained shall be paid by the owner of the cattle, horses, or mules, and when sold by a commission firm, sales agency, or when purchased by a buying station operator or packing plant, it shall be the obligation of the commission firm, sales agency, buying station operator, or packing plant company to collect and withhold from the proceeds of such sale the inspection fee and to pay over to the association upon demand the amounts so collected without any deductions whatsoever. Whenever a brand inspector is required to travel to points other than the inspector's official stations to perform local brand inspection, the inspector shall be paid mileage by the shipper, owner, or consignor at the same rate per mile [1.61 kilometers] paid state officials in addition to the regular brand inspection fee. A permanent inspection permit may be obtained, for horses and mules only, by payment of a ten dollar inspection fee.
12. The following auction markets outside the state of North Dakota are designated official brand inspection markets for North Dakota cattle, horses, and mules by the North Dakota stockmen's association:



Mobridge livestock auction, Mobridge, South Dakota; McLaughlin sales, inc., McLaughlin, South Dakota; Lemmon livestock market, inc., Lemmon, South Dakota; Sisseton livestock sale co., Sisseton, South Dakota; Britton livestock sale co., Britton, South Dakota; hub city livestock sale co., Aberdeen, South Dakota; Aberdeen livestock sales, Aberdeen, South Dakota; Herreid livestock sale co., Herreid, South Dakota; Baker livestock auction, inc., Baker, Montana; Glendive livestock auction, Glendive, Montana; Sidney livestock market center, Sidney, Montana.

If any of the above markets where the North Dakota stockmen's association provides brand inspection closes for a period of three months or longer, the market must file a written request and follow the same criteria as listed for new requests for brand inspection services.

- a. The request must be from a market within thirty-five miles of the North Dakota border.
- b. The number of potential inspections must be at a level that is feasible for the North Dakota stockmen's association to hire personnel to perform the inspection services.
- c. The auction must file a bond with the North Dakota stockmen's association in an amount to assure that any shortage of income from inspections will cover all expenses incurred in performing the services.
- d. The auctions must agree to abide by all North Dakota livestock inspection laws and rules. Failure to do so will result in immediate revocation of their service.

**History:** Amended effective April 1, 1980; July 1, 1982; June 1, 1983; April 1, 1988; September 1, 1988; July 1, 1995; September 1, 2003; November 1, 2004; January 1, 2011.

**General Authority:** NDCC 36-22-03

**Law Implemented:** NDCC 36-05-10, 36-09-15, 36-09-23, 36-09-26, 36-22-02, 36-22-03





**TITLE 61**  
**STATE BOARD OF PHARMACY**





**JANUARY 2011**

**CHAPTER 61-02-07.1**

**61-02-07.1-13. Pharmacy technician reinstatement.** If a registered pharmacy technician fails to pay the fee for a renewal registration within the time required, the executive director of the board shall cancel the registration for nonpayment. Upon application, the delinquent registrant may procure a renewed registration once the payment of all back registration fees and proof of ten hours of continuing pharmaceutical education obtained within the past year are submitted, provided there have been no disciplinary actions involved with the registration and the board is satisfied that the applicant is a proper person to receive the same.

**History:** Effective January 1, 2011.

**General Authority:** NDCC 28-32-02, 43-15-10(12)(14)(19)

**Law Implemented:** NDCC 28-32-03, 43-15-10(12)(14)(19)



**TITLE 75**  
**DEPARTMENT OF HUMAN SERVICES**





## **JANUARY 2011**

### **CHAPTER 75-02-01.2**

#### **75-02-01.2-01. Definitions.** For the purposes of this chapter:

1. "Aid to families with dependent children" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Social Security Act [42 U.S.C. 601 et seq.] during periods prior to July 1, 1997.
2. "Applicant" means an individual who is seeking a benefit under this chapter.
3. "Asset" means any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether or not presently vested with possessory rights.
4. "Assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs, but does not include nonrecurring, short-term benefits, work subsidies, supportive services provided to families who are employed, and refundable earned income tax credits.
5. "Base month" means the month, immediately before the processing month, about which the income and circumstances of the household are evaluated to determine the amount of any benefits to be paid during the benefit month.
6. "Benefit cap child" means a child born after June 30, 1998, to a household member who was a recipient of assistance under this chapter during the month of probable conception.
7. "Benefit month" means the calendar month immediately following the processing month.
8. "Benefits" means the amount of temporary assistance for needy families assistance a family receives including the temporary assistance for



needy families amount, essential services, and supportive services, reduced by recoupments.

9. "Caretaker relative" means the relative so designated by the household who:
  - a. Lives with an eligible dependent child;
  - b. Is a pregnant woman, caretaker relative to no dependent child, in the last trimester of her pregnancy; or
  - c. Lives with a dependent child, under age eighteen and receiving supplemental security income benefits, who is the last child in the home.
10. "Child only case" means a case in which the only eligible individual is a dependent child and the caretaker relative is ineligible as a nonlegally responsible caretaker, or as a legally responsible caretaker due to being a supplemental security income recipient, a disqualified alien, a disqualified fleeing felon, a disqualified parole violator, a disqualified probation violator, or disqualified for committing fraud.
11. "Child support agency" means any entity created by a county agency or any combination of county agencies, in execution of the county agency's duties under subsection 5 of North Dakota Century Code section 50-09-03.
- ~~41.~~ 12. "County agency" means the county social service board.
- ~~42.~~ 13. "County demonstration project" means a project operated by a county, with state approval, to conduct a temporary assistance for needy families program with different objective criteria for the delivery of benefits, services, and the determination of eligibility from those provided elsewhere in the state.
- ~~43.~~ 14. "Department" means the North Dakota department of human services.
- ~~44.~~ 15. "Dependent child" means a needy child:
  - a. Who lives in the home of a relative by birth, marriage, or adoption;
  - b. Who has been deprived of parental support or care by reason of:
    - (1) The continued absence of a parent from the home, other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States;
    - (2) The death of a parent; or



(3) The physical or mental incapacity of a parent; and

c. Who is:

(1) Under the age of eighteen; or

(2) Under the age of nineteen and a full-time student in a secondary school or a vocational or technical school that is equivalent (secondary school) level in a vocational school, or technical to a secondary school, if, before the end of the calendar month in which the student attains age nineteen, the student may reasonably be expected to complete the program of such school.

45: 16. "Earned income" means income currently received as wages, salaries, commissions, or profits from activities in which a household member is engaged through either employment or self-employment. There must be an appreciable amount of personal involvement and effort, on the part of the household, for income to be considered earned.

17. "Earned right benefit" means a benefit an individual is entitled to receive as a result of being employed, even after the employment has terminated. These benefits include veterans' compensation and pensions; old age, survivors, and disability insurance benefits; railroad retirement benefits; workforce safety and insurance wage-loss and permanent impairment benefits; and unemployment compensation.

46: 18. "Eligible caretaker relative" means a caretaker relative who:

- a. If, related to an eligible dependent child as a brother or sister, is not under sixteen years of age;
- b. If deprivation of parental support or care is by reason of the incapacity or disability of a parent, is the incapacitated or disabled parent or the eligible dependent child's other parent, but not stepparent;
- c. If deprivation of parental support or care is by reason of the death or continued absence of a parent, is the eligible dependent child's other parent, but not stepparent;
- d. Is not a recipient of supplemental security income benefits; and
- e. Is in financial need; ~~or~~
- f. Is a pregnant woman, in the third trimester of her pregnancy, caretaker relative to no other dependent or legally responsible caretaker child, who or whose husband is incapacitated; or

- g. Is related to a dependent child by birth, whether by whole or half-blood, by marriage, or by adoption, and who is within the fifth degree of relationship to that child.
17. 19. "Family" includes ~~an~~:
- a. An individual or group of related individuals within a household whose needs are recognized in a grant of benefits through temporary assistance for needy families; the;
  - b. The parents of any dependent child and all brothers and sisters of any dependent child, whether by whole blood, or half-blood, marriage, or adoption, any child, parent of an eligible dependent child, or other caretaker relative who receives supplemental security income benefits. Family includes an;
  - c. An alien who does not meet citizen and alienage requirements; an;
  - d. An alien who is ineligible for temporary assistance for needy families benefits because of the application of sponsor-to-alien deeming; an;
  - e. An individual who is ineligible for temporary assistance for needy families benefits as the result of the imposition of a sanction; an individual who was eligible for temporary assistance for needy families benefits, but who became ineligible due to the receipt of lump sum income, or an or disqualification; and
  - f. An individual who is a household member who is a legal dependent or a legally responsible caretaker of a member of the filing-unit household, but does not include roomers and or boarders.
20. "Financially responsible person" means a person legally responsible for or with a legal duty to provide for the financial support of another person.
18. 21. "Full calendar month" means the period that begins at midnight on the last day of the previous month and ends at midnight on the last day of the month under consideration.
19. 22. "Full-time student" means a student who:
- a. If in a secondary school, is enrolled in classes which, if completed, will earn the student four or more units of credit;
  - b. If in a vocational or technical school under state operation, a college, or a university, is enrolled in classes that, if completed, will earn the student twelve or more semester hours of credit during a regular term or six or more semester hours of credit during a



summer term at an educational facility operating on a semester system, or twelve or more quarter hours of credit during a regular term or six or more quarter hours of credit during a summer term at an educational facility operating on a quarter system;

- c. If in a private vocational or technical school, is enrolled in classes which, according to a written statement from school officials, constitutes full-time enrollment;
  - d. Is enrolled in an accredited alternative high school, correspondence courses, or adult basic education, according to a written statement from school officials or who is home schooled; or
  - e. Is an individual participating in job corps, whether an adult or a child.
20. "Housing costs" means the full amount of rent or, if purchasing a home, the full amount of the mortgage, property insurance, property taxes, special assessments, repairs, and improvements of the home.
- ~~20-~~ 24. "Ineligible caretaker relative" means a caretaker relative who is not an eligible caretaker relative.
- ~~24-~~ 25. "Living in the home of a relative" means a circumstance that arises when a relative assumes and continues responsibility for the day-to-day care and control of a child in a place of residence maintained by the relative (whether one or more) as the relative's own home. It includes situations in which the child or the relative requires medical treatment that requires a special living arrangement. It also includes situations in which the child is temporarily absent from the home, with a plan to return, when the child:
- a. Physically resides in the home, but is under the jurisdiction of a court and is receiving probation services or protective supervision;
  - b. Receives education while in an educational boarding arrangement in another community if needed specialized services or facilities are unavailable in the home community or if transportation problems make school attendance near home difficult or impossible;
  - c. Receives services at a summer camp such as Camp Grassick, receives services at an attention deficit hyperactivity disorder summer camp, or receives extended hospital stays during the summer months;
  - d. Receives special education at the school for the deaf or school for the blind, whether as a day student or a boarding student, except that a boarding student's needs are limited to those maintenance items that are not provided by the school; or

- e. Receives education at a boarding school in another community, provided that the child was not placed in that setting following removal from the child's home by court order following a determination that the child was abused, neglected, or deprived, except that the child is entitled to a clothing and personal needs allowance only if that allowance is made available for the child's use on a regular basis.
22. ~~26.~~ "Make an assistance payment" means, in the context of two-month retrospective budgeting, an activity that occurs on the date the department deposits an assistance payment check in the United States mail.
23. ~~27.~~ "Monthly income" means income from any source, either earned or unearned, which is computed and reduced to monthly units for the purpose of determining eligibility and benefits. Income may be received weekly, every other week, twice a month, monthly, intermittently, or annually, but is computed and considered monthly.
24. ~~28.~~ "Needy" means:
- ~~a. A a~~ household, otherwise eligible under this chapter, whose countable income, less any applicable disregards, is less than the income identified in the basic requirements table for a family of the size and composition of the household;
  - ~~b. An unwed parent or pregnant woman in the third trimester of her pregnancy, with an income of less than forty-five dollars per month; or~~
  - ~~c. A child resident of a boarding school with an income of less than forty-five dollars per month when added to special items of need and any clothing and personal needs allowances of forty-five dollars for which the household is eligible.~~
25. ~~29.~~ "Nonlegally responsible relative" means a relative who is not the child's parent.
26. ~~30.~~ "Parent" means the child's mother or father, whether by birth or adoption, but does not mean:
- a. An individual whose parental rights have been terminated with respect to that child; or
  - b. A stepparent.
27. ~~31.~~ "Part-time student" means an individual enrolled in a secondary school, vocational school, correspondence courses, technical school, college, or university, or who is home schooled, who is not a full-time student.



- ~~28-~~ 32. "Processing month" means the month, immediately after the base month, and immediately before the benefit month, in which the county agency determines eligibility for, and the amount of, any benefit to be paid during the benefit month.
- ~~29-~~ 33. "Proper individual" means any individual of sufficient maturity and understanding to act responsibly on behalf of the applicant.
- ~~30-~~ 34. "Prospective budgeting" means the determination, made only with respect to the initial month of eligibility and the month immediately after the initial month of eligibility, based on the county agency's best estimate of the income and circumstances of the household in those months, of the amount of any grant of benefits in those two months.
- ~~31-~~ 35. "Prudent person concept" means a method or program administration that relies upon individual staff members:
- a. To exercise judgment in requesting, reviewing, and weighing information provided by an applicant, recipient, or any source of verification; and
  - b. To be attentive, vigilant, cautious, perceptive, and governed by reason and common sense.
- ~~32-~~ 36. "Recipient" means an individual who receives cash assistance under this chapter.
- ~~33-~~ 37. "Relative by birth, marriage, or adoption" means an individual related to the dependent child by birth, whether by blood or half-blood, by marriage including a marriage that has been terminated by death or divorce, or by adoption, as father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, or first cousin.
- ~~34-~~ 38. "Retrospective budgeting" means a determination, made by the county agency during the processing month, based on income and circumstances of the household, during the base month, of the amount of any grant of assistance in the benefit month.
- ~~35-~~ 39. "Sanction penalty month" means the month in which a sanctioned individual's financial needs may be removed from a household's temporary assistance for needy families grant.
- ~~36-~~ 40. "Self-sufficient" means having income sufficient to require closure of the temporary assistance for needy families case.
- ~~37-~~ "Social contract" means the application for temporary assistance for needy families that contains the requirements for cooperation with child

~~support enforcement, health tracks, job opportunities and basic skills program, and the goals and tasks identified in the assessment.~~

- ~~41.~~ 41. "Special item of need" means an additional benefit paid to a temporary assistance for needy families household to reimburse certain expenses that are not included in the basic standard of need. These items include health insurance premiums, car seats, essential service, house allowance, and catastrophic events.
- ~~38.~~ 42. "Standard employment expense allowance" means twenty-seven percent of earned income, or one hundred eighty dollars, whichever is greater, to be first disregarded from the earned income of any child, or adult relative applying for benefits under this chapter, or any other individual whose needs are taken into account in determining eligibility under this chapter, but whose earned income is not required to be wholly disregarded as the income of a child who is a full-time student or a part-time student who is not a full-time employee.
- ~~39.~~ 43. "Stepparent" means an individual married to a parent of a child after the birth or adoption of the child, but who is not also a parent of that child by either birth or adoption.
- ~~40.~~ 44. "Supplemental security income" means a program administered under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
- ~~41.~~ 45. "Supportive services" means services approved by the department and provided to an individual receiving other temporary assistance for needy families benefits, to assist in training for employment, seeking employment or maintaining employment, and to support job opportunities and basic skills program activities.
- ~~42.~~ 46. "Temporary assistance for needy families" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Social Security Act [42 U.S.C. 601 et seq.] during periods beginning July 1, 1997.
- ~~43.~~ 47. "Temporary assistance for needy families household" means an individual or group of individuals who reside together and includes at least one individual in receipt of temporary assistance for needy families.
- ~~44.~~ 48. "The Act" means the Social Security Act [42 U.S.C. 301 et seq.].
- ~~45.~~ 49. "Title II" means title II of the Social Security Act [42 U.S.C. 401 et seq.].
- ~~46.~~ 50. "Title IV-A" means title IV-A of the Social Security Act [42 U.S.C. 601 et seq.].



47- 51. "Title IV-D" means title IV-D of the Social Security Act [42 U.S.C. 651 et seq.].

48- 52. "Unearned income" means income that is not earned income.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-02.1. Diversion assistance.** Diversion assistance may be provided to a family experiencing a specific crisis situation or episode of need. Diversion assistance is not assistance under title 45, Code of Federal Regulations, part 260.31, and is not a benefit for purposes of North Dakota Century Code section 50-09-06.1. Diversion assistance may be provided to a family that meets all factors of eligibility for assistance under the temporary assistance for needy families program except as provided in this section.

1. A family may not receive diversion assistance and a temporary assistance for needy families grant in the same month. A family may receive diversion assistance for up to four months within a twelve-month period beginning in the month diversion assistance is provided. A family that includes a caretaker who is not a legally responsible relative of a child member of the family may not receive diversion assistance.
2. Diversion assistance may be provided to defray expenses necessary to retain or obtain employment. Within the limits described by the department, supportive services additional funds may be made available to a participant who would be unable to enter into or remain in a work activity without the use of supportive services those funds. Necessary expenses incurred in retaining or obtaining employment must be verified.
3. ~~Household members age sixteen or older, who have completed high school or received a general equivalency diploma, or who have neither completed high school nor received a general equivalency diploma and are not attending school, must participate in the pathways to work program to reduce barriers to employment, or to prepare for and obtain paid employment, thereby enabling participants to become self-sufficient. Pathways to work provides individualized, intensive case management services to all work-ready and non-work-ready adults who are receiving diversion assistance. Participants who fail or refuse to comply with pathways to work requirements may have their diversion assistance case closed. Actions or failures to comply that may result in case closure include:~~
  - a- ~~Failure to complete the goals, tasks, or objectives listed on an action plan or an employability plan; and~~

- ~~b. Failure to cooperate with an agency providing services to meet goals, tasks, or objectives listed in the action plan or employability plan, including goals identified in the assessment.~~
- 4. Cooperation in obtaining support or establishing paternity for any child member of the family is permitted but not required.
- 5. ~~An assessment and social contract are not required.~~
- 6. 4. An applicant may appeal a denial, limitation, or termination of diversion assistance, and a recipient of diversion assistance may appeal termination or reduction of assistance diversion, by making a written request for a hearing within thirty days from the date of the notice of adverse action. ~~Diversion assistance not already approved~~ If diversion is denied or the case is close, diversion may not be provided pending completion of the fair hearing decision process. If diversion is reduced, benefits may be continued only based on the reduced level, pending completion of the fair hearing process.
- 7. 5. A month in which diversion assistance is received does not count toward the temporary assistance for needy families sixty-month lifetime limit provided under section 75-02-01.2-35.1.
- 8. 6. When a diversion assistance household is determined to have a recurrent or ongoing need, the diversion assistance case must be closed and the household may reapply under temporary assistance for needy families to meet the recurrent or ongoing needs.

**History:** Effective June 1, 2005; amended effective January 1, 2009; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

#### **75-02-01.2-02.2. Kinship care assistance.**

- 1. Kinship care provides a monthly maintenance payment and supportive services to a child residing outside the child's parental home with a caretaker who is related to that child within the fifth degree of kinship. To be eligible:
  - a. A court of competent jurisdiction must have entered an order placing a child's care, custody, and control with a county agency, an official of a county agency, the executive director of the department, or the division of juvenile services; and
  - b. Before placing a child in kinship care for more than thirty days, the child's custodian must have completed a family study, a child abuse and neglect background check, and other investigations, as



identified in chapter 75-03-14, as the department may determine necessary to demonstrate that:

- (1) The home in which care is provided is in fit and sanitary condition and properly equipped to provide good care to the child;
  - (2) The caretaker and other adults residing in the home of the caretaker properly qualify to carry out the duties and responsibilities of a kinship care provider;
  - (3) Kinship care provided in the home is for the public good in accordance with sound social policy and with due regard to the health, morality, and well-being of all children cared for in the home; and
  - (4) The home is maintained according to standards prescribed for its conduct by the department.
2. Within the limits established by the department, supportive services may provide reimbursements for child care expenses, transportation, clothing, emergent needs, activity fees, and, as a payer of last resort, reasonable legal fees incurred by or on behalf of a child and approved by the department.
  3. For purposes of this section, a relative is within the fifth degree of kinship if the relative by birth, marriage, or adoption, is the child's sibling; niece; nephew; grandniece; grandnephew; grandparent; aunt; uncle; first cousin; first cousin once removed; great-grandparent; great-aunt; great-uncle; parent's first cousin; great, great-grandparent; great, great-aunt; great, great-uncle; or great, great, great-grandparent.
  4. Kinship care monthly maintenance payments must be the same as the standard of need amount for a shared living arrangement for a child under the temporary assistance for needy families program.

**History:** Effective June 1, 2005; amended effective January 1, 2009; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-02.3. Transition assistance.** Transition assistance promotes job retention by providing an extended period of cash assistance to qualified families under temporary assistance for needy families. Households with earnings from employment exceeding the allowable standard of need for their household size may remain eligible for transition assistance for up to six months. Transition assistance is assistance under title 45, Code of Federal Regulations, part 260.31, and is a benefit for purposes of North Dakota Century Code section 50-09-06.1. Transition assistance may be provided to a family that meets all factors of eligibility

for assistance under the temporary assistance for needy families program except as provided in this section. For purposes of this section, "caretaker" means a person who provides support to a minor child and who may or may not receive benefits. All provisions of this chapter apply except:

1. A family may not receive a grant for transition assistance in any month in which that family receives a grant for temporary assistance for needy families or diversion assistance.
2. No one may be provided transition assistance in an application month. Only recipients of temporary assistance for needy families may become eligible for transition assistance.
3. Transition assistance provides a monthly job retention incentive, ~~a one-time-only high school graduation or general education diploma incentive, and reimbursement of expenses associated with the cost of child care, health insurance, health tracks, and transportation assistance, and special items of need as allowed under the temporary assistance for needy families program.~~
4. A family may not receive transition assistance for more than six consecutive months.
5. Transition assistance may not be provided to:
  - a. A caretaker sanctioned due to noncompliance with work requirements;
  - b. A caretaker relative, in a child-only case;
  - c. A minor parent who is not the head of household or spouse of the head of household;
  - d. An alien who is ineligible to receive assistance due to his or her immigration status;
  - e. A caretaker in receipt of supplemental security income benefits; and
  - f. A caretaker with a disqualification penalty applied for a voluntary job quit or voluntary refusal of an offer of employment or training for employment.

**History:** Effective January 1, 2009; amended effective January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-10. Monthly report - Must be complete and timely.**



1. When the county agency receives a completed monthly report, it shall process the payment only if all eligibility conditions are met. The county agency shall notify the household of any changes from a payment made in the month immediately past. If payment is being reduced or assistance terminated as a result of information provided in the monthly report, the county agency shall send an adequate notice, ~~mailed to arrive no later than the resulting payment or in lieu of the payment.~~ The household may be reinstated to the payment amount made in the month immediately past if an appeal of the decision described in the notice is made within ten days of the date of the notice.
2. A county agency may terminate assistance if it has received no timely monthly report or has received only an incomplete report. The county agency shall send an adequate notice, mailed to arrive no later than the date it would have made payment if the agency had received a timely and complete monthly report. If the household notifies the county agency and files a complete report within ten days of the date of the notice, the county agency may accept the replacement report and provide for payment based on the report only if the information indicates that the household is still eligible. If, based on the replacement report, the household is found ineligible or eligible for an amount less than the payment amount made in the month immediately past, the county agency shall promptly notify the household of the right to a fair hearing and, if a hearing is requested within ten days from the date of the notice, the right to have payment reinstated to the payment amount made in the month immediately past.

**History:** Effective December 9, 1996; amended effective January 1, 2003; June 1, 2005; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

#### **75-02-01.2-13. Residence.**

1. There is no durational state residence required for eligibility for benefits.
2. No individual who is otherwise eligible may be denied assistance under the program if the individual resides in the state.
3. A resident of the state is one who:
  - a. Is living in the state voluntarily with the intention of making the person's home there; or
  - b. At the time of application, is living in the state and is not receiving temporary assistance for needy families from another state.
4. For purposes of establishing the temporary assistance for needy families filing unit, a child is a resident of the state in which the child is

living other than for a temporary basis. For all other purposes of this chapter, a child is a resident of the state in which the child is living.

5. Residence may not depend upon the reason for which the individual entered the state, except insofar as it may bear upon whether the individual is there voluntarily.
6. Residence is retained until abandoned. ~~Temporary absence from the state, with subsequent returns or intent to return when the purposes of the absence have been accomplished, must not interrupt continuity of residence.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

#### **75-02-01.2-15. Continued absence of a parent.**

1. For purposes of this chapter:
  - a. "Deprived of parental support or care by reason of the continued absence of a parent" means a situation that occurs when all of the following factors are present:
    - (1) The parent is physically absent from the home;
    - (2) The nature of the parent's absence is such as to interrupt or terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child; and
    - (3) The known or indefinite duration of the absence precludes relying on the parent to perform the parent's functions in planning for the present support or care of the child.
  - b. A "parent's absence is such as to interrupt or terminate the parent's functioning as a provider of maintenance, physical care, or guidance for the child" only if one of these three functions is totally interrupted or finally terminated.
2. A determination that a parent's absence has or has not interrupted or terminated the parent's functioning must be supported by information provided by the applicant or otherwise available to the county agency.
3. Except as provided in ~~subsection~~ subsections 4 and 5, if all three of the conditions for showing deprivation by reason of the continued absence of a parent are met, the reason for the parent's absence and the length of the parent's absence is immaterial.



4. A parent who is performing active duty in uniformed service is "absent from the home" only if there is evidence that continued absence would have existed irrespective of the parent's serving in uniformed service. Acceptable evidence that such an absence exists includes proof of legal separation, desertion, or divorce, either final or in process. If there has been no legal action taken, some indication of how the parent came to be absent must be provided.
5. A parent temporarily living apart from the child or children while attending school or vocational training or working or seeking work in another community does not meet the requirements for continued absence as long as the parent continues to function as a parent, even if the level of support or care is deficient or diminished.
6. Types of parental absences frequently giving rise to dependency in children include:
  - a. Divorce. The continued absence of a parent may be established as the result of divorce.
  - b. Separation. Legal separation is an arrangement by which a husband and wife live apart, subject to a court order that may divide the parties' property, provide for spousal or child support, and provide for custody and visitation of children, but remain married. Such court orders may be temporary or permanent. Separation by mutual consent or agreement involves the discontinuance of the marital relationship without legal action. Continued absence of a parent as a result of this arrangement can be established if there is no collusion between the parents to render the family eligible for temporary assistance for needy families.
  - c. Imprisonment. Imprisonment of a parent is a type of parental absence that creates dependency among children. Continued absence exists only if the parent is sentenced to and serves a thirty-day or longer term of incarceration unless:
    - (1) The term actually served is less than the sentence imposed;
    - (2) The term served is shortened by order of the court; and
    - (3) Assistance has been issued before information about the shortened term is received by the county agency.
  - d. Unmarried parenthood. A child born out of wedlock is deprived of parental support by reason of continued absence of a parent if the child's parents do not reside together.

- e. Desertion. Desertion is the voluntary and willful abandonment, by a parent, of the parent's child or children without making adequate provision for the care and support of the child or children.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-24. Lump sums received by a member of the household.**

1. All nonrecurring lump sum payments must be considered as an asset beginning the second month following the month of receipt. For that month, the remaining lump sum amount is included with all other nonexempt assets in determining eligibility.
2. Recurring unearned income lump sum payments received after an application has been filed for temporary assistance for needy families must be considered countable income and prorated over the period the payment is intended to cover. The prorated lump sum payment must continue to be counted if the case closes and reopens during the income prorate period in which the payment was received or reopens during the income prorate period immediately succeeding the income prorate period in which the case was closed.
3. For purposes of this section, "lump sum income or payment" includes retroactive monthly benefits provided under title II of the Social Security Act and other retroactive monthly benefits, payments in the nature of windfall, such as lottery or gambling winnings or inheritances, judgments, or settlements for injuries to person or property to the extent that the payment is not earmarked and used for the purpose for which it was paid such as burial costs, and repair or replacement of lost or damaged assets, and workers' compensation awards.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-27. Social security numbers.** Before the needs of an individual may be included in the benefit, the individual shall furnish a social security number or proof that ~~one the individual~~ the individual has been applied for a social security number. An individual may not be initially included in or added to a household, including newborn children, until the individual's social security number or proof of application has been received. An individual who has been included in or added to a household upon providing proof that the individual has applied for a social security number shall provide a social security number within six months of receipt of the number or



at the time of the next redetermination of eligibility following receipt of the number, whichever is earlier.

**History:** Effective December 9, 1996; amended effective January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-28. Eligibility for aliens who arrived before August 22, 1996.**

1. Except as provided in subsection 3, an alien who arrived before August 22, 1996, and who is lawfully admitted for permanent residence under color of law is eligible for benefits if all other requirements for eligibility are met.
2. An alien may be lawfully admitted for a temporary or specific period of time. Such aliens are not eligible for benefits because they do not meet the requirement that residence be permanent. Examples include aliens with student visas, visitors, tourists, some workers, and diplomats.
3.
  - a. ~~A sponsored alien is ineligible for benefits for a three-year period, beginning with the alien's entry into the United States, unless the sponsor:~~
    - ~~(1) No longer exists; or~~
    - ~~(2) Is unable to meet the alien's financial needs.~~
  - b. A sponsored alien who applies for benefits ~~within three years following entry into the United States shall~~ and whose sponsor's income and assets must be deemed available to the alien, as a condition of eligibility, shall provide the county agency with information and verification sufficient to determine the portion of the sponsor's income and assets that may be deemed available to the alien.
  - e. b. The sponsor and the sponsored alien are both liable for the amount of any overpayment of benefits that results from the failure of either to provide information and verification sufficient to allow the county agency to correctly determine the portion of the sponsor's income and assets that may be deemed available to the alien.
  - d. c. For purposes of this section:
    - (1) "Sponsor" means an individual including an individual's spouse, public organization, or private organization who executed an affidavit of support or similar agreement on behalf of an alien, who is not the child of the sponsor ~~or the~~

~~sponsor's spouse~~, as a condition of the alien's entry into the United States.

- (2) "Sponsored alien" means an alien whose entry into the United States was conditioned on the execution of an affidavit of support or similar agreement by a sponsor who is not a parent or the spouse of a parent of the alien.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-28.1. Eligibility for aliens who arrived on or after August 22, 1996.**

1. This section applies only to immigrants who arrive in the United States on or after August 22, 1996.
2. Except as provided in subsection 3, no noncitizen immigrant is eligible for benefits for the first five years of that immigrant's residence in the United States.
3. An otherwise eligible noncitizen immigrant may be provided benefits:
  - a. After that immigrant has resided in the United States for five years; ~~provided that the income and assets of the~~ The immigrant's sponsor sponsor's and sponsor's spouse's income and assets must be deemed available to the immigrant, if applicable;
  - b. ~~After that immigrant has established forty quarters of work history for social security benefit purposes, without deeming of the income or assets of the immigrant's sponsor; or~~
  - c. If the immigrant is:
    - (1) A refugee, asylee, victim of human trafficking, or has been granted withholding of deportation.
    - (2) A veteran of United States military service, an individual on active military duty, or a spouse or dependent of such a veteran or person on active military duty.
    - (3) An entrant entitled to refugee and entrant assistance.
    - (4) Deportation withheld under section 243(h) of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] as in effect prior to April 1, 1997, or whose removal is withheld under section



241(b)(3) of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].

- (5) Cuban or Haitian entrants as defined in section 501(e) of the Refugee Education Assistance Act of 1980.
- (6) Amerasian entrant.
- (7) Conditional entrant under section 203(a)(7) of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] prior to April 1, 1980, if a veteran or on active duty in the United States armed forces or spouse or unmarried dependent child of a veteran or person on active duty.
- (8) ~~Hmong or highland Laotian if the individual was a member at the time the tribe rendered assistance to the United States during the Vietnam era from August 5, 1964, through May 7, 1975. A spouse or unmarried dependent child of Hmong or highland Laotian may be eligible if the person meets one of the following:~~
  - ~~(a) Spouse remains married to the tribal member;~~
  - ~~(b) Was married to the member at the time of the member's death and has not remarried;~~
  - ~~(c) An unmarried dependent child (biological or adopted) under the age of eighteen or if the person is a full-time student under the age of twenty-two. This also applies if the parent is deceased, provided that the child was dependent on the parent at the time of death; or~~
  - ~~(d) An unmarried disabled child, biological or adopted, age eighteen or older if the child was disabled and dependent on the parent prior to the child's eighteenth birthday.~~
- (9) Lawfully admitted for residence if lawfully residing in the United States on August 22, 1996, and if receiving benefits for blindness or disability; or was born on or before August 22, 1931; or is now under eighteen years of age; or if elderly, disabled; or child entered after August 22, 1996, and meet other alien eligibility criteria or ineligible.
- (10) ~~Lawfully admitted for permanent residence, if meets forty quarter requirement, or veteran on active duty in United States armed forces or spouse or unmarried dependent child of veteran or person on active duty.~~

- (11) ~~Parolee under section 212(d)(5) of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] and status is granted for at least one year if veteran or on active duty in United States armed forces or spouse or unmarried dependent child of veteran or person on active duty.~~
- (12) ~~Battered spouse or child if veteran or on active duty in United States armed forces or spouse or unmarried dependent child of veteran or person on active duty and an alien who has been battered or subjected to cruelty in the United States by a spouse or a parent or by a member of the spouse or parents' family residing in the same household as the alien at the time of the abuse, an alien whose child has been battered or subjected to battery or cruelty, or an alien child whose parent has been battered. The battered spouse or child cannot be living with the family who battered that person.~~
- (13) ~~American Indian if born in Canada and who possesses at least fifty percent of blood of the American Indian race to whom the provisions of section 289 of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] apply or a member of an Indian tribe as defined in section 4(e) of the Indian Self Determination and Education Assistance Act [25 U.S.C. 450b(e)] which is recognized as eligible for the special programs and services provided by the United States Indians because of their status as Indians.~~

d. ~~Aliens may meet eligibility criteria if they have~~

- (9) ~~An individual that has a past or current involvement with the United States armed forces and are is lawfully admitted to the United States under immigration and naturalization service status. Spouses and unmarried dependent children of an individual with past or current United States military involvement may also meet eligibility criteria.~~

4. ~~An otherwise eligible citizen immigrant may be provided benefits.~~

**History:** Effective July 1, 1997; amended effective January 1, 2003; July 16, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02



**75-02-01.2-30. Limitation on benefits to pregnant women.**

1. A pregnant woman, not made ineligible by any other provision of this chapter, who is caretaker relative to no child, may receive temporary assistance for needy families based upon the standard of need for one adult, without consideration of any additional pregnancy-related needs, no earlier than the sixth month of pregnancy. Medical verification of the pregnancy and the approximate date on which the pregnant woman is expected to deliver must be provided.
2. ~~The individual shall complete the assessment process of the social contract within four months of the beginning of benefits.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-31. Age of parent - Effect on eligibility.**

1. For purposes of this section:
  - a. "Adult caretaker" means a caretaker who is not a minor caretaker.
  - b. "Minor caretaker" means an individual, under the age of eighteen years, who has never been married and who:
    - (1) Is the parent of a dependent child living in the same household; or
    - (2) Is eligible as a pregnant woman in the third trimester of her pregnancy who is a caretaker relative to no child.
2. A minor caretaker who lives with the minor caretaker's own parents is eligible only if eligibility may be established after consideration of the income, but not the assets, of the parents with whom the minor caretaker lives, applying the following disregards:
  - a. The greater of one hundred eighty dollars or twenty-seven percent of earned income of each employed parent of the minor caretaker, for work expenses.
  - b. An amount equal to the standard of need, not including special allowances or special items of need, applicable to a household consisting of the minor caretaker's parents and any other individuals living in the home, who are or could be claimed as dependents of the minor caretaker's parents for federal income tax purposes, but who are not members of the household.

- c. Amounts paid by the minor caretaker's parents, to support individuals who are not members of the household, who are or could be claimed as dependents of the minor caretaker's parents for federal income tax purposes.
  - d. Amounts paid by the minor caretaker's parents, for child support or spousal support, health insurance premiums, or child or adult dependent care costs related to employment or employment and education or training, to individuals who are not members of the household.
- 3. An adult caretaker, who lives with the adult caretaker's own parent or legal guardian, if eligible, is eligible without consideration of the income or assets of any adult caretaker's parents with whom the adult caretaker lives, except that regular contributions of money made by such adult caretaker's parent to any member of the household must be considered.
- 4. For purposes of this section, a minor caretaker who becomes an adult while living with the minor caretaker's own parents or legal guardian is treated as an adult caretaker, effective the first day of the month in which the caretaker reaches age eighteen.
- 5. For purposes of this section, a minor caretaker who ends residency with the minor caretaker's own parent is treated as having ended residency on the first day of the month in which the minor caretaker left the minor caretaker's parent's home.
- 6. For purposes of this section, a minor caretaker who resumes residency with the minor caretaker's own parent is treated as having resumed that residency on the first day of the month after the month in which the minor caretaker resumed residency with the minor caretaker's parent.
- 7. A minor caretaker who does not live with either of the minor caretaker's own parents, if eligible, is eligible without consideration of the income or assets of the minor caretaker's parent except that regular contributions of money made by a minor caretaker's parent to any member of the household must be considered. The minor caretaker's parents remain legally responsible for the minor caretaker's support. The matter must be referred to the child support agency for the purpose of securing support from the minor caretaker's parents as well as for the purpose of securing support for the minor caretaker's child from the child's absent parent.
- 8. No household may include the child of a minor caretaker, living with that minor caretaker, during any time when the minor caretaker is living in a foster home or child care institution and receiving a foster care maintenance benefit. Any amount reasonably necessary to the maintenance of such a child of the minor caretaker is included in the minor caretaker's foster care maintenance benefit.



9. Except as provided in subsection 10, a minor caretaker must live in the home of the minor caretaker's own parent, legal guardian, or other adult relative, or in a state-approved adult supervised supported living arrangement.
10. A minor caretaker may show there is good cause to live in a place other than required in subsection 9. Good cause exists if, based on evidence provided to the county agency:
  - a. The minor caretaker has no living parent or legal guardian;
  - b. No parent or legal guardian of the minor caretaker will allow the minor caretaker to live in the home of the parent or legal guardian;
  - c. The physical or emotional health or safety of the minor caretaker or the minor caretaker's child would be jeopardized if they lived with the minor caretaker's parent or legal guardian; or
  - d. ~~The minor caretaker lived apart from the minor caretaker's parent or legal guardian for at least one year before the earlier of the birth of the dependent child or the minor caretaker's application for temporary assistance for needy families;~~
  - e. ~~The minor caretaker has earned a high school diploma or general equivalency diploma and is participating in postsecondary education under an approved job opportunities and basic skills program employability plan; or~~
  - f. After reasonable search, the whereabouts of the minor caretaker's parents or legal guardian are unknown.
11. A household consisting of two natural or adoptive parents may be eligible for benefits when at least one parent is age sixty-five or older, if all factors of eligibility are met and the household's countable income is less than the temporary assistance for needy families standard of need.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

#### **75-02-01.2-32. Value of benefit.**

1. The reasonable value of the physical and custodial care or support that has been furnished to the child or children of a noncustodial parent by the program is, for each month such child or children are eligible, the amount of the assistance received multiplied by the number of children

of the noncustodial parent in the household and divided by the total number of children in the household.

2. ~~Stepparents cannot be legally required to support their stepchildren.~~
3. If a stepparent is eligible to receive assistance, the reasonable value of the physical and custodial care or support which has been furnished to the child or children of a noncustodial parent by the program is, for each month such child or children are eligible, the amount of assistance received multiplied by the number of children of the noncustodial parent in the household and divided by one plus the total number of children in the household.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-33. Assignment of right to support.**

1. The child support agency must be notified of any child, except a benefit cap child or a child in receipt of supplemental security income, who is a member of the household and whose eligibility for assistance is based on the continued absence of the child's parent from the home.
2. The applicant and, upon request, any member of the household for whom temporary assistance for needy families is requested, as a condition of eligibility shall:
  - a. Execute all necessary documents to protect the right of any member of the household, and the agency, to child support from the absent parent of such member; and
  - b. Cooperate in obtaining support and in establishing paternity of any child in the household with respect to whom paternity has not been established.
3. The requirement for the assignment of rights to support from absent parents continues through the month in which the latest of the following occurs:
  - a. The child reaches age eighteen.
  - b. The child graduates from high school, provided that graduation does not occur after the month of the child's nineteenth birthday.
  - c. Child support obligations, imposed by a court for periods after the child reaches age eighteen, are terminated.



4. For purposes of this section:
  - a. "Cooperate in obtaining support and in establishing paternity" includes:
    - (1) Appearing at a state or local office designated by the department or county agency to provide information or evidence relevant to the case;
    - (2) Appearing as a witness at a court or other proceeding;
    - (3) Providing credible information, or credibly attesting to lack of information;
    - (4) Paying to the department any support funds received that are covered by the assignment of rights; and
    - (5) Taking any other reasonable steps to assist in establishing paternity and securing child support.
  - b. A child support agency shall determine if the applicant, recipient, or any member of the household, who is required to cooperate in obtaining support and establishing paternity, has done so. In making that determination, the child support agency shall consider if any information provided, or attestation to lack of information, is corroborated by relevant circumstances and is credible. Information provided, or an attestation to lack of information, is not presumed correct.
5. An individual shall cooperate in establishing paternity of a child born out of wedlock for whom the individual can legally assign rights, and obtaining child support and payments for the individual and any other individual for whom the individual can legally assign rights, unless cooperation is waived by the county agency for good cause.
6. The custodian who refuses to cooperate in obtaining support, including establishing paternity, is ineligible to receive assistance. If the custodian continues to refuse to cooperate, the entire household shall become ineligible for assistance and may not reapply for one full benefit month following case closure.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-35. Combined requirements.**

1. The department shall establish combined requirements for the temporary assistance for needy families standards of need that represent amounts of income, by household size and living arrangement, necessary for a standard of living compatible with decency and health.
2. The six basic items of need considered in the temporary assistance for needy families cash grant are:
  - a. Shelter;
  - b. Food;
  - c. Clothing;
  - d. Personal needs such as combs, toothbrushes, toothpaste, razor blades, sanitary supplies, and haircuts;
  - e. Household supplies such as cooking utensils, laundry detergent, bedding, and towels; and
  - f. Fuel and utilities.
3. ~~The applicable standard of need determination must be based on whether the family has an independent living arrangement or a shared living arrangement. A family has an independent living arrangement if the members of the family have sole responsibility for all shelter costs. A family has a shared living arrangement if:~~
  - ~~a. The household includes an individual who is at least eighteen years of age and not a member of the family;~~
  - ~~b. The family receives a subsidy for shelter expenses, resides in public housing, or is not solely responsible for the assistance unit's shelter costs; or~~
  - ~~c. Any member of the family receives assistance for the payment of shelter costs from someone not residing in the family's home.~~

**History:** Effective December 9, 1996; amended effective January 1, 2003; June 1, 2005; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-37. Determining membership of the household.**

1. The household must include at least one eligible child unless:



- a. The only child receives supplemental security income benefits; or
  - b. The household includes a pregnant woman in the last trimester of her pregnancy.
- 2. Any parent and spouse of the parent of a dependent child who resides reside in the home must be included in the household.
- 3. If the household includes a parent and a needy dependent child, any other child who resides in the home, for whom assistance is sought, and to whom the parent is a relative by birth, marriage, or adoption, must be included in the household.
- 4. If the household includes a parent and the parent's nonneedy dependent child or children, any other needy dependent child or children to whom the parent is a relative by birth, marriage, or adoption, must be included in a household which consists only of the needy dependent child or children.
- 5. If the household includes a parent, the parent's needy dependent child or children, and other dependent children to whom the parent is a relative by birth, marriage, or adoption, the household must include the parent and the parent's needy dependent child or children, and may include any needy dependent child or children to whom the parent is a relative by birth, marriage, or adoption, but exclude any nonneedy dependent child or children who is not the parent's child but to whom the parent is a relative by birth, marriage, or adoption, and who is not a brother or sister, whether by the whole or half-blood or by adoption, to a needy dependent child.
- 6. If the household includes a stepparent but does not include a natural or adoptive parent, the household must include the stepparent of the natural or adoptive parent's needy dependent child or children and any brothers and sisters of the needy dependent child, whether by whole or half-blood or by adoption, and any natural or adoptive children of the stepparent.
- 7. A minor parent who lives in the home of a parent of the minor parent is treated as a dependent child in a household that includes a parent of the minor parent unless:
  - a. The minor parent is married or formerly married and divorced, but not formerly married in an annulled marriage;
  - b. The minor parent has resided with the other parent of the minor parent's child; or
  - c. The minor parent has lived separately and apart from the minor parent's parent or lawful guardian, with the consent or

acquiescence of the minor parent's parent or lawful guardian, while managing the minor's own financial affairs regardless of the source of income, so long as it is not from any activity declared to be a crime by the laws of North Dakota or the United States.

- ~~7-~~ 8. Household members who are receiving supplemental security income benefits may not be included in the household.
- ~~8-~~ 9. Household members who are ineligible for assistance because of a sanction or disqualification imposed under this chapter must be included in the household for the purpose of consideration of income and assets of the sanctioned household member.
- ~~9-~~ 10. Household members who are ineligible for assistance because they do not meet citizenship or alienage requirements imposed under this chapter must be included in the household for the purpose of consideration of income and assets of those household members.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-40. Combined supplemental security income and temporary assistance for needy families households.**

- 1. With respect to the same month, no individual may receive assistance through both the supplemental security income program and the temporary assistance for needy families program.
- 2. An individual who is receiving supplemental security income benefits may be a member of a household as an ineligible caretaker relative for a child in the household.
- 3. Assets or income owned solely or jointly by the recipient of supplemental security income benefits, including that portion of income disregarded in determining eligibility for supplemental security income benefits, may not be considered available to the members of the household.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-41. Recipients living out of state.** An individual who receives assistance is free to travel without a loss of eligibility so long as the individual remains a resident of the state. An individual remains a resident of the state when absent from the state for brief periods provided the individual returns to the state by the last day of the month following the month the individual left. An individual



temporarily living out of state who remains a resident of North Dakota is subject to the same standards and procedures for eligibility determinations and budgeting as a similarly situated individual present in the state.

**History:** Effective December 9, 1996; amended effective January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-44. Income described.**

1. All income that is actually available must be considered. Income is actually available when it is at the disposal of an applicant or recipient; when the applicant or recipient has a legal interest in a liquidated sum and has the legal ability to make the sum available for support or maintenance; or when the applicant or recipient has the lawful power to make the income available or to cause the income to be made available. In specific circumstances, income available to persons other than the applicant or recipient is deemed available. This subsection does not supersede other provisions of this chapter which describe or require specific treatment of income, or which describe specific circumstances that require a particular treatment of income.
2. Income may be earned, unearned, or deemed. It may be received regularly, irregularly, or in lump sums. Income may be counted or excluded. It may be disregarded for some purposes, but not for others. Other sections of this chapter explain those treatments.
3. Each household member must accept any ~~unemployment compensation~~ earned rights benefits to which entitled. Each household member must provide verification, ~~from job service North Dakota,~~ as to whether the household member is qualified for ~~unemployment compensation~~ earned rights benefits; and, if qualified, must make application for ~~unemployment compensation~~ those benefits and secure ~~such~~ those benefits if qualified.
4. Earned income includes:
  - a. Wages, salaries, commissions, bonuses, or profits received as a result of holding a job or being self-employed;
  - b. Earnings from on-the-job training ~~provided by the Job Training Partnership Act or the~~ including the Workforce Investment Act of 1998 and job opportunities and basic skills program;
  - c. Wages received as the result of participation in the mainstream and green thumb programs;

- d. Earnings of recipients employed by schools under title I of the Elementary and Secondary Schools Act [20 U.S.C. 236 et seq.];
  - e. Wages received from sheltered workshop employment;
  - f. Sick leave pay or loss-of-time private insurance paid for the loss of employment due to illness or injury;
  - g. Compensation for jury duty;
  - h. Tips;
  - i. Income from boarders;
  - j. Income from room rentals;
  - k. Income from participation in job corps; and
  - l. Income from internship or stipends.
5. Unearned income includes:
- a. Social security, veterans benefits of any kind, private pensions, pensions provided to former employees of public entities, workers' compensation, unemployment benefits, union compensation during strikes, and military allotments;
  - b. Rents paid without an appreciable amount of personal involvement and effort provided as a service to the tenant, mineral lease rentals, bonus payments and royalties, dividends, and interest paid;
  - c. Cash contributions from relatives provided to the household for living expenses;
  - d. Cash gifts;
  - e. Poor relief or general assistance payments made to any member of the household by a county agency or the bureau of Indian affairs; and
  - f. Any other form of income that is not earned income.
6. Deemed income includes:
- a. In the case of income deemed from a stepparent or alien parent, that stepparent's or alien parent's entire gross income less:



- (1) The greater of one hundred eighty dollars or the twenty-seven percent standard employment expense allowance;
  - (2) An additional amount for the support of the stepparent or alien parent and any other individuals living in the home whose needs are not taken into account in making the eligibility determination and who are or could be claimed by the stepparent or alien parent as dependents for federal income tax purposes, but not including any sanctioned individuals or individuals who are required to be included in the household, but have failed to cooperate, equal to the standard of need amount for a family group of the same composition and size as the stepparent or alien parent and those other individuals described in this paragraph;
  - (3) Spousal support child support payments, health insurance premiums, and child or adult dependent care costs related to employment or employment and education or training actually being made to or on behalf of persons not living in the home; and
  - (4) Amounts actually being paid to individuals not living in the home who are or could be claimed by the stepparent or alien parent as dependents for federal income tax purposes.
- b. In the case of income deemed from the sponsor of a sponsored alien, the entire gross income of the sponsor and the sponsor's spouse, less:
- (1) ~~The greater of one hundred eighty dollars or twenty-seven percent of the total monthly earned income of the sponsor and the sponsor's spouse;~~
  - (2) ~~An amount equal to the standard of need amount for a family group of the same composition and size as the sponsor and those other individuals living in the sponsor's household who are or could be claimed by the sponsor as dependents for federal income tax purposes, but whose needs are not taken into account in making an eligibility determination under this chapter;~~
  - (3) ~~Spousal support and child support payments actually being made by the sponsor to or on behalf of individuals not living in the sponsor's household; and~~
  - (4) ~~Amounts actually being paid by the sponsor to individuals not living in the sponsor's household who are or could be claimed by the sponsor as a dependent for federal income tax purposes~~ in excess of one hundred twenty-five percent of

the federal poverty level equal to the household size of the sponsor.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-47. Budgeting process.**

1. Budgeting is the process by which a household's need is determined. Through the process available, income is matched against the standard of need.
2. If nonexcluded income equals or exceeds the standard of need, the household is not needy, and the household is ineligible for assistance.

**History:** Effective December 9, 1996; amended effective January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-51. Disregarded income.**

1. The department shall establish an employment incentive, and an employment incentive limit, to reasonably encourage household members to earn income.
2. If permitted under subsection 3, income must be disregarded, as an employment incentive, in determining the cash grant amount.
  - a. The greater of one hundred eighty dollars or twenty-seven percent of the household's monthly gross earned income, except earnings of any child who is a full-time elementary or high school student, is disregarded as a standard employment expense allowance. The amount remaining is net earned income.
  - b. Any net earned income that exceeds the income incentive limit is treated as countable earned income.
  - c. A portion of net earned income that is equal to or less than the income incentive limit may be disregarded, under this subdivision, in determining countable earned income.
    - (1) If an applicant has earned income in the month of application or the month after the month of application, at least fifty percent of the net earned income may be disregarded for six months beginning the month in which the earned income is first budgeted.



- (2) If a recipient has earned income, at least thirty-five percent of the net earned income may be disregarded for months seven through nine beginning the month earned income is first budgeted.
  - (3) If a recipient has earned income, at least twenty-five percent of the net earned income may be disregarded for months ten through thirteen after the month earned income is first budgeted.
  - (4) If a recipient has earned income, no net earned income may be disregarded under this subdivision after the thirteenth month after the month earned income is first budgeted.
  - (5) Individuals that have received a full thirteen months of the incentive known as the time-limited percentage will not be eligible for this incentive again.
- d. An employed household member who receives an employment incentive disregard for a period of at least ~~four~~ six consecutive months is provided employment incentive disregards of at least fifty percent for the first six months ~~after~~ beginning the month in which the income is first budgeted, at least thirty-five percent for months seven through nine, at least twenty-five percent for months ten through thirteen, and none thereafter.
  - e. An employed household member who receives an employment incentive disregard for a period of less than ~~four~~ six consecutive months is, upon reemployment, provided the employment incentive disregards the member would have received if the first month of reemployment was the first month income is budgeted retrospectively.
  - f. If an employed household member, who is receiving the employment incentive disregard, voluntarily terminates employment and is unable to show good cause for failure or refusal to participate, the employment incentive disregard cycle continues as if the household member was employed.
  - g. If any nondisregarded income remains, a health insurance premium, or paid child or spousal support ~~or alimony~~, if applicable, may be disregarded.
  - h. If any nondisregarded income remains, child and dependent care costs that are employment-related or a combination of employment-related and education or training-related may be disregarded.

3. An income disregard is available only if the eligible employed individual previously received assistance, but has not completed the twelve-month earned income employment incentive disregard cycle, including months in which the earned income disregard was unavailable because:
  - a. No payment was made because the calculated cash grant was less than ten dollars;
  - b. The household voluntarily requested termination of assistance for the primary purpose of avoiding completion of the earned income employment incentive disregard cycle or any part of that cycle; or
  - c. The household failed, without good cause, to file a signed and completed monthly report form by the fifteenth day of the month in which the report was due; or
  - d. ~~A member of the household terminated or reduced employment, without good cause, in the thirty days preceding the month in which the earned income employment incentive disregard was unavailable; or~~
  - e. ~~A member of the household refused a bona fide job offer, or voluntarily quit a job, without good cause, in the thirty days preceding the month in which the earned income employment incentive disregard was unavailable.~~
4. If, in any month, additional income received from a recurring source causes the household to be suspended as ineligible for one month, the month of suspension does not count as a month for purposes of this section.
5. Nonhousehold member deduction for stepparent and minor parent budgeting, if applicable, may be made.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-52. Voluntary quit or refusal of employment.** No household member, except a dependent child, may refuse a bona fide offer of employment or training for employment, or terminate employment, without good cause, within thirty days before the date of application.

1. If an offer of employment or training was made through job service North Dakota, job service North Dakota shall determine if a bona fide offer was made and if there was good cause for refusing it.



2. If an offer of employment or training was made other than through job service North Dakota, the county agency shall determine if a bona fide offer was made and if there was good cause for refusing it, considering the following factors:
  - a. Whether there was a definite offer of employment at wages meeting any applicable minimum wage requirements and that are customary for such work in the community;
  - b. Whether there were any questions as to the physical or mental ability of the household member to engage in the offered employment or training for employment;
  - c. Whether there were any questions of the working conditions such as risks to health, safety, or lack of workers' compensation protection;
  - d. Whether the household member had a way to get to or from the particular job, including evidence the household member reasonably attempted to arrange for transportation;
  - e. Whether, as a condition of being employed, the household member would be required to join a company union, or to resign or refrain from any bona fide labor organization, or would be denied the right to retain membership in and observe the lawful rules of any such organization;
  - f. Whether the position offered is vacant directly due to a strike, lockout, or other labor dispute;
  - g. Whether the work is at an unreasonable distance from the household member's residence, provided one-way traveltime of one hour or less may not be treated as an unreasonable distance;
  - h. Whether gross wages are less than the allowable employment expense and child care or adult dependent care;
  - i. Whether an individual's substantially continuous presence in the household is necessary to care for another individual in the household to whom the individual owes a legal duty to provide care, who has a condition, verified by reliable medical evidence, which does not permit self-care or care by another household member; and
  - j. Whether the individual is a victim of domestic violence.
3. If it is determined that a household member voluntarily quit employment or a bona fide offer of employment or training was refused by a household member, without good cause:

- a. In the case of a recipient household, the member who voluntarily quits a job or refuses a bona fide offer of employment or training for employment is ~~ineligible for the benefit month in which the refusal occurred~~ subject to sanction through the job opportunity and basic skills program, if the individual is required to participate in the program; and
  - b. In the case of an applicant household, the entire household is ineligible for the thirty days following the actual date of refusal or termination of employment.
4. ~~If it is determined that a recipient household member voluntarily quits employment without good cause, without prior approval from the household member's job opportunities and basic skills employment contractor, that household member is ineligible in the benefit month in which the job quit occurred, and may not receive the standard employment expense allowance described in section 75-02-01.2-51, any employment incentive disregard, or any child or adult dependent care deduction, in the month the job quit occurred, and in the month the income is budgeted.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

#### **75-02-01.2-53. Deduction for dependent care.**

- 1. A deduction for a member of a household who is an employed caretaker relative ~~or attending school or training~~ may be made for the cost of necessary care of a child or incapacitated adult who is a member of the household, living in the home, and receiving assistance.
- 2. The deduction may not be made for the cost of dependent care provided by the caretaker relative's child or stepchild who is under twenty-one years of age, unless:
  - a. The provider of dependent care does not live in the home occupied by the household;
  - b. The provider of dependent care is at least eighteen years of age;
  - c. The provider of dependent care was not claimed as a dependent on the most recent federal income tax return filed by the caretaker relative;
  - d. A bona fide relationship of employer and employee exists between the caretaker relative and the provider of dependent care; and



- e. The provider of dependent care is not a member of the caretaker relative's household.
3. The deduction may not be made for the cost of dependent care provided to a child by that child's stepparent ~~or parent~~ who lives in the home occupied by the household or by the child's natural or adoptive parent.
4. The deduction is for the lesser of the actual cost of care or limits established under the child care assistance program based on the age of the child.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-62. Computing payment for a child in boarding school.**

1. If a child leaves the residence occupied by the household to attend boarding school, the child is treated as having left on the first day of the month following the month in which the child actually left.
2. If a child returns from boarding school to the residence occupied by the household for reasons other than home visits, and the caretaker relative notifies the county agency of the return or anticipated return by the fifth day of the month of actual return, the child is treated as having returned on the first day of the month of actual return, but is otherwise treated as having returned on the first day of the month following the month of actual return.
3. Payment for any month in which a child who is a member of the household is in boarding school, or is treated as in boarding school, is, with respect to that child, limited to an allowance for clothing and personal needs.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-63. Budgeting in unusual circumstances.**

1. Except as provided in subsection 3, if an eligible child lives in the home of a relative who is not the child's parent, the relative is ineligible if the relative's spouse also lives in the home.
2. If an eligible child lives in the home of a relative who is not the child's parent, and the spouse of that relative does not also live in the home, the relative:

- a. Must be excluded from the household if the relative's income and assets would cause the household to be ineligible; and
  - b. May be included in the household if the relative requests inclusion and the relative's income and assets do not cause the household to be ineligible.
3. Except as provided in subsection 5, if an eligible child lives in the home of a relative who is not the child's parent, but who is, and could in the absence of that child be, a member of a household which includes the spouse of the relative, the eligible child must be added as a member of the household of the relative.
4. Except as provided in subsection 5, if two or more eligible children are living in the home of an ineligible relative who is not a parent of either child, all eligible children must be included in a single household.
5. An individual who is a caretaker relative in a household may act as a temporary payee for a child who is a member of another household and with respect to whom the individual is a relative, while that child lives temporarily with the individual, to preserve the child's usual living arrangement with that child's caretaker relative who is:
  - a. Hospitalized; or
  - b. Incarcerated for ninety days or less.
6. If two or more relatives, who are each eligible caretakers for one or more children but who are not married to each other and who have no children in common living in the household, live together, each caretaker and the child or children with respect to whom that caretaker is a relative must be budgeted as a household.
7. If a child lives with a relative who receives supplemental security income benefits, budgeting is based on the number of eligible individuals in the household.
8. If a child lives with a parent whose needs are deleted from the benefit due to the parent's failure to cooperate in obtaining support and in establishing paternity or in the job opportunities and basic skills program, the parent's income and assets must be considered in determining eligibility for the remaining members of the household. The income of the parent is subject to any applicable income disregards.
9. If an eligible caretaker leaves a child in the care of another individual while the caretaker pursues an educational program in another community, budgeting for the household must be done as if the unit resided together.



10. a. If a member of a household is hospitalized or residing in a halfway house, a drug and alcohol treatment facility, the North Dakota state hospital, a nursing home, or a swing bed facility, and there is a medical plan that the individual may return to the household:
  - (1) No reduction in assistance may be made for the first three full months if the individual receives a cash grant, but the needs of the individual must be reduced thereafter to a forty-five dollar clothing and personal needs allowance; and
  - (2) Effective the first day of the month following the date of admittance to the institution, the needs of a household member admitted to a veterans administration hospital or any state institution other than the North Dakota state hospital must be deleted.
- b. For periods when the needs of an individual must be reduced, the individual's share of assistance is limited to the amount of the clothing and personal needs allowance, effective with the first month the reduction may be made. This budgeting arrangement must continue as long as the medical plan calls for the individual to return to the household, but may not exceed nine months.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

#### **75-02-01.2-64. Essential services.**

1. The county agency may determine that a service, which the family cannot perform independently because of infirmity or illness, is essential to the well-being of the household.
2. "Essential service" includes housekeeping services and child care during a caregiver's illness or hospitalization, attendant services, and extraordinary costs of accompanying a member of the family to a distant medical or rehabilitation facility, arising out of a special need or condition of a member of the household or an ineligible caretaker who is not a parent of a child in the household and ~~who is not receiving supplemental security income benefits~~ and may include other expenses and services, provided:
  - a. The need is unforeseen and due to no fault of the household;
  - b. The department is the payer of last resort; and
  - c. The household receives prior approval from the department.

3. The cost of essential services, which is a special item of need:
  - a. May be provided for in the cash grant only if the cost has been established through negotiations with the provider of the services; and
  - b. Must be budgeted and paid retrospectively or by supplemental payments.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-65. Catastrophic events and unforeseen circumstances.**

1. The county agency may authorize vendor payments for the replacement of food, clothing, furniture, household equipment, and supplies, as a special item of need, at a level comparable to that maintained by the household prior to a flood, fire, storm, or other disaster, if:
  - ~~4-~~ a. The availability of replacements, at no or nominal cost to the household, from sources such as the American red cross, has been determined and assistance with replacements coordinated; and
  - ~~2-~~ b. The loss of items for which replacement is sought has been determined.
2. The county agency may authorize reimbursement for an unforeseen expense incurred by a recipient for a payment made in a situation that was beyond the individual's control.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-66. Medical insurance premiums.**

1. The county agency may authorize payment for the cost of premiums for health insurance carried by the household, as a special item of need. Payment may be made for only one policy of health insurance. If the policy covers individuals who are not members of the household, payment is limited to:
  - a. If the household or insurer provides information that describes the manner in which the insurance company allocates premium



charges between the insureds, the allocation attributable to the members of the household; or, if that allocation is unavailable; and

- b. The total premium amount, divided by the number of individuals covered, and then multiplied by the number of covered members of the household.
2. For purposes of this section, "premiums for health insurance" includes payments made for insurance, health care plans, or nonprofit health service plan contracts that provide benefits for hospital, surgical, medical care and dental or vision insurance, but do not include payments made for coverage that is:
  - a. Limited to disability or income protection coverage;
  - b. Automobile medical payment coverage;
  - c. Supplemental to liability insurance;
  - d. Designed solely to provide payments on a per diem basis, daily indemnity, or nonexpense-incurred basis; or
  - e. Credit accident and health insurance.
3. Payment for the cost of premiums for health insurance:
  - a. May be provided in the cash grant only if the cost or pro rata cost has been established; and
  - b. Must be budgeted and paid in the month in which the county agency is informed of the insurance and receives verification of the cost.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-67. Child restraint systems.** The county agency may authorize payment for as a special item of need, to members of the household for the verified cost of an approved child restraint system designed to secure a child while riding in a passenger vehicle.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-68. High school graduate or general equivalency diploma incentive payment.** The county agency may authorize a one-time payment of two

hundred fifty dollars, as a special item of need, to each individual in the household upon completion of high school or receipt of general ~~education development~~ equivalency diploma.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-68.1. Housing allowance.** The county agency may authorize, as a special item of need, an additional fifty dollars per month when a family has an independent living arrangement and the members of the family have sole responsibility for all housing costs.

**History:** Effective January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-71. Making payment - Correcting overpayments and underpayments.**

1. A payment of a cash grant is deemed to be complete as of 12:01 a.m. on the first day of the month for which it is issued.
2. Except as provided in subsection 3, a payment check must be endorsed by the payee, or an attorney-in-fact for the payee, with a signature, written in ink, in the same form as the indicated payee.
  - a. If the payee is a guardian, the endorsement must so indicate and must name the ward.
  - b. If the endorsement is by an attorney-in-fact of the payee, the endorsement must so indicate and must name the attorney-in-fact.
3. If the payee dies or becomes absent before a properly issued check has been endorsed, an endorsement may be made:
  - a. By the payee's spouse or surviving spouse, if that spouse has been living with the payee, and, if there is no such spouse;
  - b. By a temporary payee, and, if there is no such spouse or temporary payee; or
  - c. By the director of the county agency.
4. A payment check endorsed under subsection 3 must include, immediately below the endorsement, a statement of approval dated and signed by the director of the county agency.



5. A payment check may be issued to replace a lost, stolen, or destroyed payment check only if:
  - a. An indemnity bond is executed by the payee and delivered to the department's finance office; and
  - b. A stop-payment order is placed against the payment check alleged to be lost or destroyed.
6. Any overpayment, whether resulting from recipient or administrative error, or from assistance granted pending a decision on an appeal adverse to the appellant, and whenever made, is subject to recovery. Except as provided in subsection 7, an overpayment must be collected from any household that includes a member who benefited from, or who was responsible for, the overpayment, by reducing the cash grant, to that household, by an amount equal to ten percent of the standard of need.
7. If a court order, entered in a matter that considered the circumstances leading to the overpayment, requires restitution of an amount less than the amount of the overpayment, or requires periodic payments of restitution greater or less than the monthly amount determined under subsection 6, the amount of restitution and periodic payments so ordered must be used to calculate reduction, in the cash grant amount, used to recover an overpayment.
8. Unless the overpayment was the result of fraud, including fraud involving the crimes of theft and making false statements in a governmental matter, or an intentional program violation, the county agency may suspend efforts to collect overpayments when no individual who benefited from, or was responsible for, the overpayment is a member of a household:
  - a. If the amount of the overpayment is less than thirty-five dollars; or
  - b. When recovery is determined not to be cost effective after an effort to recover has failed, including, at a minimum, a written communication describing the amount and basis for the overpayment, and requesting repayment.
9. The county agency shall promptly correct any underpayment for a current member of a household, or to an individual who would be a current member of a household but for the error that led to the underpayment.

**History:** Effective December 9, 1996; amended effective January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-72. Intentional program violation - Disqualification penalties.**

1. For purposes of this section:
  - a. "Intentional program violation" means an individual's intentional action or failure to act which consists of:
    - (1) Making a false or misleading statement or misrepresenting, concealing, or withholding facts;
    - (2) Violating provisions of North Dakota Century Code chapter 50-09, this chapter, or any state statute relating to the acquisition or use of assistance provided under North Dakota Century Code chapter 50-09 or this chapter; or
    - (3) Being convicted in federal or state court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive temporary assistance for needy families, medicaid, supplemental nutrition assistance program benefits, or supplemental security income simultaneously from two or more states; and
  - b. An individual intends all results reasonably foreseeable from the actions the individual takes or fails to take.
2. An individual who, on any basis, is found to have committed an intentional program violation by a state administrative disqualification proceeding or by a federal or state court must be subject to the penalties provided in this section.
3. An individual who waives the individual's right to appear at an intentional program violation hearing must be subject to the penalties provided in this section.
4. During any period of disqualification:
  - a. The individual's needs may not be taken into account when determining the household's need and amount of assistance;
  - b. All assets and income of the disqualified individual, including gross earned income, must be considered available to the household;
  - c. Income disregards may be provided for the disqualified individual when determining if the remaining household members are eligible; and



- d. The overpayment is recovered through a reduction, at the rate of twenty percent of the standard of need, excluding special items of need.
5. The duration of the penalty described in this section must be:
  - a. One year for the first offense;
  - b. Two years for the second offense;
  - c. Permanent for the third and any subsequent offense; and
  - d. Ten years for individuals who were convicted in federal or state court of fraudulently misrepresented misrepresenting residence.
6. Any period of disqualification must remain in effect, without possibility of an administrative stay, unless and until the finding upon which the penalty was based is subsequently reversed by a court of appropriate jurisdiction, but in no event may the duration of the period for which the penalty was imposed be subject to review.
7. In cases when a disqualification penalty and other sanctions or penalties apply:
  - a. The disqualification penalties in this section must be in addition to, and may not be substituted for, any other sanctions or penalties that may be imposed for the same offense; and
  - b. The disqualification penalties imposed under this section affect only the individual concerned and cannot substitute for other sanctions imposed under this chapter.
8. A disqualification penalty imposed on an individual by another state may be continued in this state and may be used to determine the appropriate duration of a disqualification penalty imposed under this section.
9. A disqualification penalty period must begin no later than the first day of the second month that follows the date of notice of imposition of the penalty.
10. The department shall issue a written notice informing the individual of the period of disqualification and the amount of assistance the household may receive during the disqualification period.
11. Overpayments must be recovered from the assistance unit which was overpaid, any assistance unit of which a member of the overpaid assistance unit has subsequently become a member, or any individual

members of the overpaid assistance unit whether or not currently a recipient.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-73. Health tracks.** All members of a household, under age twenty-one, who complete a health tracks screening are eligible for a minimum twenty-five dollar payment, as a special item of need.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-74. Assessment and case plan.** Repealed effective January 1, 2011. ~~Assessment is an ongoing process in the program. The assessment may result in goals for the household. The eligibility worker and household prioritize the goals to develop a case plan. This case plan identifies issues to be resolved, tasks for completing the goals, and times to complete the tasks. Agencies or services that can assist in reaching goals are identified and referrals to agencies are made when the case plan is formalized.~~

**History:** ~~Effective December 9, 1996; amended effective January 1, 2003; June 1, 2005.~~

**General Authority:** ~~NDCC 50-09-02, 50-09-25~~

**Law Implemented:** ~~NDCC 50-09-02~~

**75-02-01.2-75. Temporary assistance for needy families social contract.** Repealed effective January 1, 2011. ~~The temporary assistance for needy families social contract is an agreement, signed by the household, that documents the goals and tasks identified in the assessment, the mandatory requirements on the application for benefits, and records times for the completion of those tasks. The social contract is negotiated between the eligibility worker and the household. Each household must develop and sign a contract, by the end of the fourth benefit month, as a condition of continued eligibility. The household must comply with the terms of the social contract. The social contract is subject to change as conditions warrant. It must be reviewed and updated with the household on at least an annual basis. A temporary assistance for needy families social contract must:~~

- ~~1. Address immediate health and safety needs that are mutually identified by the household and eligibility worker;~~
- ~~2. Specify what the responsibilities of the household and the eligibility worker may be;~~



- ~~3. Establish realistic goals, reflective of the household's capabilities and the resources available to assist in meeting goals;~~
- ~~4. Clearly identify tasks required for continued participation;~~
- ~~5. Establish specific times for the accomplishment of tasks;~~
- ~~6. Provide a means to evaluate progress toward meeting identified goals and tasks; and~~
- ~~7. Unless an exemption or good cause is determined, require compliance with the mandatory requirements, which include:~~
  - ~~a. Child support enforcement when appropriate deprivation reasons exist;~~
  - ~~b. Health tracks program; and~~
  - ~~c. Job opportunities and basic skills program.~~

**History:** ~~Effective December 9, 1996; amended effective January 1, 2003; June 1, 2005.~~

**General Authority:** ~~NDCC 50-09-02, 50-09-25~~

**Law Implemented:** ~~NDCC 50-09-02~~

**75-02-01.2-76. Social contract. Repealed effective January 1, 2011.**

- ~~1. The assessment must be completed and social contract signed by the end of the fourth benefit month. The social contract must be signed by the primary individual in the household and the eligibility worker. Ten days before the end of the fourth benefit month, a written statement must be sent reminding the household that the household is ineligible for a fifth month's assistance if the social contract is not signed.~~
- ~~2. If a household becomes ineligible under subsection 1 because the assessment is not completed and the social contract is not signed, and the household reapplies within a one-year period from its original application date, a cash grant may not be issued until the household completes an assessment and signs a social contract.~~
- ~~3. For purposes of this section:~~
  - ~~a. If a household becomes ineligible under subsection 1 because the contract is not signed and reapplies more than one year after the household's last application date, the reapplication may be treated as a new application; and~~

- b. ~~If a household becomes ineligible for a reason other than failure to sign a social contract as required under subsection 1, the reapplication may be treated as a new application.~~

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-77. Annual reassessment.** Repealed effective January 1, 2011. The social contract must be reviewed and updated annually based on a reassessment of the household. A reassessment may be made when there has been a significant change to the household. Addition or deletion of an adult family member is a significant change.

**History:** Effective December 9, 1996; amended effective January 1, 2003.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-79. Sanctions for noncompliance with temporary assistance for needy families program requirements.**

1. Temporary assistance for needy families participants who fail or refuse to comply with program requirements, without good cause, may be sanctioned. Actions or failures to comply that may result in sanctions include:
  - a. Failure or refusal to participate in the job opportunities and basic skills or tribal native employment works programs;
  - b. Failure or refusal to cooperate in obtaining child support or establishing paternity; and
  - c. ~~Not completing a social contract;~~
  - d. ~~Not signing a social contract;~~
  - e. ~~Not completing the goals or tasks listed on a social contract; and~~
  - f. ~~Not cooperating with an agency providing services to meet goals or tasks listed in the social contract, including goals identified as mandatory or nonmandatory referrals and goals that are nonmandatory and identified in the assessment~~ Quit a job or refused an offer of employment without good cause.
2. All sanctions are first imposed against the responsible individual and will result in removal of the individual's financial needs from the household's temporary assistance for needy families grant, for a period of one month in an ongoing case, or in the case of a new application subject to a job



opportunity and basic skills program sanction, for a period of up to four months.

3. If the sanctioned individual does not cure the sanction prior to the end of the sanction penalty month, the sanction may progress to closure of the entire temporary assistance for needy families case.
  - a. A sanction penalty month runs from the effective date of a sanction through the last day of that month.
  - b. If a sanction, based on noncooperation with the job opportunities and basic skills program leads to closure of the entire temporary assistance for needy families case, the household shall, at a minimum, be ineligible for assistance in the month following the sanction penalty month, and until the responsible individual cures the sanction.
  - c. If a sanction, based on noncooperation with child support enforcement leads to closure of the entire temporary assistance for needy families case, the household shall be ineligible for assistance in the month following the sanction penalty month.
4. Sanctions under temporary assistance for needy families follow a noncooperating individual.
5. A job opportunities and basic skills program sanction, or a tribal native employment works program sanction, ~~or a sanction for failure to comply with the social contract requirements~~, is cured only when the responsible individual demonstrates, to the satisfaction of the county agency, that the failure to cooperate or participate, as required, has been corrected for at least ten consecutive days.
6. A child support enforcement sanction may only be considered cured upon notification from the child support enforcement agency to the eligibility eligibility worker that the sanctioned individual is cooperating in obtaining child support and, if necessary, establishing paternity.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-80. Good cause determination.**

1. Except with respect to a sanction imposed for failure to obtain child support, or establish paternity, an individual shall be provided an opportunity to present the good cause reason for a failure or refusal to cooperate prior to the imposition of a sanction.

2. The eligibility worker or the individual's job opportunities and basic skills employment contractor may oversee the good cause determination process.
  - a. ~~If the individual refuses to complete the social contract, refuses to sign the social contract, or refuses to comply with a referral to a service agency, the eligibility worker is responsible to oversee the good cause determination process.~~
  - b. If the individual is not cooperating with the job opportunities and basic skills program, the employment contractor is responsible to oversee the good cause determination process and must inform both the individual and the eligibility worker of the outcome of the good cause determination process.
3. Within two days after the employment contractor learns of a failure or a refusal to comply, the eligibility worker or employment contractor, as appropriate, shall send written notice to the individual to offer an opportunity to show good cause. A good cause determination must state that:
  - a. The individual is responsible to call or meet with the employment contractor within seven days, from the print date of the notice, to show good cause; and
  - b. A sanction will be imposed if the individual does not contact the employment contractor or eligibility worker, as appropriate, within the required time or does not show good cause for the individual's failure or refusal to comply.
4. If an individual fails or refuses to participate in the good cause determination process, or if it is determined that the individual did not show good cause for the initial failure or refusal to participate as required in the temporary assistance for needy families program, the eligibility worker shall notify the individual of the sanction.
5. Claims of good cause must be evaluated using the decisionmaking principles described in section 75-02-01.2-12.

**History:** Effective December 9, 1996; amended effective January 1, 2003; June 1, 2005; January 1, 2009; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-81. Good cause for failure to complete temporary assistance for needy families social contract. Repealed effective January 1, 2011.** ~~An individual who has good cause for not signing or cooperating in the development of the social contract may continue to receive assistance after the initial two months if all other factors of eligibility are met. The individual shall~~



~~complete the social contract as soon as the good cause reason is no longer applicable. Good cause for not completing the development of, or for not signing, the social contract exists only if the individual:~~

- ~~1. Has a medical condition that precludes the individual from leaving home as verified by reliable medical evidence; or~~
- ~~2. Is hospitalized or institutionalized.~~

**History:** ~~Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003.~~

**General Authority:** ~~NDCC 50-09-02, 50-09-25~~

**Law Implemented:** ~~NDCC 50-09-02~~

**75-02-01.2-82. Job opportunities and basic skills program - Definitions.**

For purposes of the job opportunities and basic skills program:

1. "Eligible individual" means an adult or minor child head of household receiving assistance or a nonrecipient parent living with a child receiving assistance.
2. "Employment contractor" means the job opportunities and basic skills program agency or staff person responsible for directing and monitoring a participant's planning and activities that relate to the job opportunities and basic skills program. The employment contractor is responsible for completing orientation and an assessment. After orientation and the assessment are completed, the employer contractor assists the participant in the development and execution of an employability plan and oversees the participant's involvement in the job opportunities and basic skills program.
3. "Minimum required hours" means the number of hours per week during which a participant must be engaged in approved work activity.
4. "Participant" means a member of a household who is not exempt from participating in the job opportunities and basic skills program or who, if exempt, has volunteered to participate in that program.
5. "Satisfactory progress" in any postsecondary education or training program means the participant is maintaining progress minimally sufficient to allow continuation of the course of study or training under the standards of the education or training facility.
6. "Work-eligible individual" includes anyone listed in subdivision a, but does not include anyone listed in subdivision b:
  - a. Included individuals are:

- (1) Any adult receiving assistance under temporary assistance for needy families;
- (2) Any minor child head of household receiving assistance under temporary assistance for needy families;
- (3) Any minor parent head of household receiving assistance under temporary assistance for needy families; or
- (4) Any nonrecipient parent living with a child receiving assistance, including any parent:
  - (a) Sanctioned due to noncompliance with work requirements; or
  - (b) Disqualified due to an intentional program violation, status as a fleeing felon, a drug felony conviction, parole or probation violation, or noncompliance with child support enforcement.

b. Individuals not included are:

- (1) A minor parent who is not the head of household;
- (2) A noncitizen who is ineligible to receive assistance due to that individual's immigration status;
- (3) A parent providing care for a disabled family member living in the home;
- (4) A dependent child who is under age sixteen;
- (5) Unless the child is a single head of household, a dependent child who is age sixteen or over, enrolled as a full-time student, who will graduate by the child's nineteenth birthday;
- (6) Those receiving supplemental security income; or
- (7) Those receiving social security disability income.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-87. Job opportunities and basic skills program - Exemptions from participation.** An individual is exempt from participation in the job opportunities and basic skills program if the individual is:



1. A parent or other eligible caretaker relative age sixty-five or older;
2. A dependent child who is under age sixteen or a dependent child who is age sixteen or over and who is enrolled or has been accepted for enrollment as a full-time student for the next school term in an elementary or secondary school or in a vocational or technical school that is equivalent to secondary school and will graduate by the child's nineteenth birthday, unless the child is a single head of household;
3. A parent or other eligible caretaker relative of a child under ~~age four~~ two months of age who is personally caring for the child full time; or
4. A parent providing care for a disabled family member living in the home, provided that the need for such care is supported by documentation.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-88. Job opportunities and basic skills program - Referral.**

1. Any individual not exempt from the job opportunities and basic skills program and anyone who volunteers must be referred to the program. Referrals may be made only after the individual is determined otherwise eligible for assistance.
2. The referred individual shall contact the job opportunities and basic skills program within seven calendar days from the print date of the referral to set up an appointment for program orientation, assessment, and employability planning and shall make a good-faith effort to complete program orientation, initial assessment, and employability planning within thirty days of the ~~referral~~ application date.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; June 1, 2005; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-90. Job opportunities and basic skills program - Supportive services and ~~transitional~~ post temporary assistance for needy families supportive services.**

1. Within the limits described in this section, supportive services may be made available to a participant who, but for supportive service, would be unable to enter into or remain in an allowable work activity. No supportive service may be provided without approval from the employment contractor or eligibility worker.

2. ~~Transitional~~ Post temporary assistance for needy families supportive services may be provided to assist employed former temporary assistance for needy families recipients to succeed in the workforce and avoid the need to receive further temporary assistance for needy families benefits.
3. Supportive services may include:
  - a. Relocation assistance provided to a job opportunities and basic skills participant if:
    - (1) The individual has a bona fide offer of employment, verified by the employment contractor, which will increase the individual's potential for increased earnings, job advancement, or permanent employment; or
    - (2) The individual requests and receives approval from the employment contractor to move from an area of the state with few employment opportunities to another area of the state with greater employment opportunities, or to an area out of state with greater employment opportunities.
  - b. Monthly transportation assistance provided to participants in an approved work activity, if necessary for continued participation.
  - c. Child care expense reimbursement in amounts consistent with the provisions of the state child care and development fund plan submitted under the Child Care and Development Block Grant Act of 1990 [42 U.S.C. 9858].
  - d. Assistance in the purchase of care for an incapacitated or disabled adult member of the participant's household, to whom the participant owes a legal duty to provide care, provided:
    - (1) There is no other person in the household who can provide the care; and
    - (2) The incapacitated or disabled adult household member cannot provide self-care.
  - e. Assistance in the purchase of employment-related clothing or personal needs determined by the employment contractor to be reasonable and necessary for the participant to enter employment.
  - f. Assistance in the purchase of tools or equipment determined by the employment contractor to be required for the participant to accept employment.



- g. Assistance in the cost of repairs determined by the employment contractor to be reasonable and necessary to return a participant's vehicle to operable condition, provided:
    - (1) The vehicle is registered to a member of the household;
    - (2) The vehicle is needed by the participant to get to work or another approved work activity; and
    - (3) The general condition and value of the vehicle justifies repairs.
  - h. Assistance for defraying the cost of books, tuition, and fees associated with an allowable work activity, provided:
    - (1) Other educational fund sources have been explored and are exhausted; and
    - (2) The participant is a member of a household and eligible for assistance at the time funds are paid or obligated.
  - i. Assistance with payment for professional license fees and professional examination fees, if there is no other available source of funding, including fee waivers, and the professional license or examination is necessary to achieve an employment-related goal.
  - j. Assistance with expenses determined by the employment contractor to be reasonable and necessary for the individual to engage in employment or participate in employment interviews, including transportation, lodging, grooming, and clothing.
4. The maximum expenditures permitted for supportive services and transitional supportive services are limited to amounts and availability as the department may by order determine.

**History:** Effective December 9, 1996; amended effective July 1, 1997; January 1, 2003; January 1, 2009; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02

**75-02-01.2-103. Job opportunities and basic skills program - Good cause for failure or refusal to comply with a referral to, or participate in, the job opportunities and basic skills program.**

1. All work-eligible individuals must participate in the job opportunities and basic skills program unless good cause is granted by the eligibility worker. Good cause for failure or refusal to participate in the job opportunities and basic skills program exists when:

- a. The household member is incapacitated with a physical or mental impairment verified by reliable medical evidence which, by itself or in conjunction with age, prevents the individual from working or participating in any job opportunities and basic skills program or work activity;
  - b. An individual whose substantially continuous presence in the household is necessary to care for another member of the household, to whom the individual seeking good cause for nonparticipation owes a legal duty to provide care, who has a condition, verified by reliable medical evidence, which does not permit self-care, care by another household member, or care provided as supportive services;
  - c. An individual has an illness or injury, verified by reliable medical evidence and reviewed every thirty days, which is serious enough to temporarily prevent entry into employment or participation in any job opportunities and basic skills program activity; or
  - d. In the case of a parent or other eligible caretaker relative of a child under age six, who is personally caring for the child full time and who demonstrates an inability to obtain needed child care for one or more of the following reasons:
    - (1) Child care is unobtainable at a location such that the usual commuting time from the parent's home to the location at which child care is provided, and on to the parent's worksite, is one hour or less;
    - (2) Suitable child care is unobtainable from a relative, from an approved child care provider licensed or registered under North Dakota Century Code chapter 50-11.1, or from a child care provider not required to be licensed or registered under North Dakota Century Code chapter 50-11.1; or
    - (3) Child care is unobtainable, from a child care provider licensed or registered under North Dakota Century Code chapter 50-11.1, at a rate equal to or less than ~~4.4~~ two times the maximum allowable amount as determined by the child care assistance program.
2. Claims of good cause must be evaluated using the decisionmaking principles described in section 75-02-01.2-12.

**History:** Effective December 9, 1996; amended effective July 1, 1997; June 1, 2002; June 1, 2005; January 1, 2009; January 1, 2011.

**General Authority:** NDCC 50-09-02, 50-09-25

**Law Implemented:** NDCC 50-09-02



## CHAPTER 75-02-02.1

### 75-02-02.1-01. Definitions. For the purposes of this chapter:

1. "Agency" means the North Dakota department of human services.
2. "Asset" means any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether or not presently vested with possessory rights.
3. "Blind" has the same meaning as the term has when used by the social security administration in determining blindness for title II or XVI of the Act.
4. "Child" means a person, under twenty-one, or, if blind or disabled, under age eighteen, who is not living independently.
5. "Contiguous" means real property which is not separated by other real property owned by others. Roads and other public rights of way which run through the property, even if owned by others, do not affect the property's contiguity.
6. "County agency" means the county social service board.
7. "Department" means the North Dakota department of human services.
8. "Deprived child" means a child who is deprived of parental support or care because one or both parents are deceased, incapacitated, disabled, aged, or maintains and resides in a separate verified residence for reasons other than employment, education, training, medical care, or uniformed service.
9. "Disabled" has the same meaning as the term has when used by the social security administration in determining disability for title II or XVI of the Act.
10. "Disabled adult child" means a disabled or blind person over the age of twenty-one who became blind or disabled before age twenty-two.
11. "Full calendar month" means the period which begins at midnight on the last day of the previous month and ends at midnight on the last day of the month under consideration.
12. "Good-faith effort to sell" means an honest effort to sell in a manner which is reasonably calculated to induce a willing buyer to believe that the property offered for sale is actually for sale at a fair price. A good-faith effort to sell includes, at a minimum, making the offer at a price based on an appraisal, a market analysis by a realtor, or another method which produces an accurate reflection of fair market value.

or, with respect to a determination of qualified disabled and working individual benefits under section 75-02-02.1-23, sixty-six and two-thirds percent of fair market value, in the following manner:

- a. To any coowner, joint owner, possessor, or occupier of the property, and, if no buyer is thereby secured;
  - b. To the regular market for such property, if any regular market exists, or, if no regular market exists;
  - c. By public advertisement for sale in a newspaper of general circulation, the circulation area of which includes the location of any property resource offered for sale, which advertisement was published successively for two weeks if the newspaper is a weekly publication and for one week if the newspaper is a daily publication, and which includes a plain and accurate description of the property, the selling price, and the name, address, and telephone number of a person who will answer inquiries and receive offers.
13. "Healthy steps" means an insurance program, for children up to age nineteen, administered under North Dakota Century Code chapter 50-29 and title XXI of the Act.
14. "Home" includes, when used in the phrase "the home occupied by the medicaid unit", the land on which the home is located, provided that the acreage [hectarage] does not exceed one hundred sixty contiguous acres [64.75 hectares] if rural or two acres [.81 hectares] if located within the established boundaries of a city.
15. "Home and community-based services" means services, provided under a waiver secured from the United States department of health and human services, which are:
  - a. Not otherwise available under medicaid; and
  - b. Furnished only to individuals who, but for the provision of such services, would require the level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded.
16. "Institutionalized individual" means an individual who is an inpatient in a nursing facility, an intermediate care facility for the mentally retarded, the state hospital, a psychiatric residential treatment facility accredited by the joint commission on accreditation of healthcare organizations, or the Anne Carlsen facility, an institution for mental disease, or who receives swing-bed care in a hospital.



17. "Living independently" means, in reference to an individual under the age of twenty-one, a status which arises in any of the following circumstances:
- a. The individual has served a tour of active duty with the armed services of the United States and lives separately and apart from the parent.
  - b. The individual has married, even though that marriage may have ended through divorce or separation. A marriage ended by legal annulment is treated as if the marriage never occurred.
  - c. The individual has lived separately and apart from both parents for at least three consecutive full calendar months after the date the individual left a parental home, continues to live separately and apart from both parents, and has received no support or assistance from either parent while living separately and apart. For purposes of this subsection:
    - (1) Periods when the individual is attending an educational or training facility, receiving care in a specialized facility, or is an institutionalized individual are deemed to be periods when the individual is living with a parent unless the individual first established that the individual was living independently; and
    - (2) Health insurance coverage and court-ordered child support payments are not "assistance or support".
  - d. The individual is a former foster care recipient who has established a living arrangement separate and apart from either parent and received no support or assistance from either parent.
  - e. The individual lives separately and apart from both parents due to incest and receives no support or assistance from either parent.
18. "Medicaid" means a program implemented pursuant to North Dakota Century Code chapter 50-24.1 and title XIX of the Act [42 U.S.C. 1396 et seq.].
19. "Medicare cost sharing" means the following costs:
- a. (1) Medicare part A premiums; and  
(2) Medicare part B premiums;
  - b. Medicare coinsurance;
  - c. Medicare deductibles; and

- d. Twenty percent of the allowed cost for medicare covered services where medicare covers only eighty percent of the allowed costs.
- 20. "Occupied" means, when used in the phrase "the home occupied by the medicaid unit", the home the medicaid unit is living in or, if temporarily absent from, possessed with an intention to return and the capability of returning within a reasonable length of time. Property is not occupied if the right to occupy has been given up through a rental or lease agreement, whether or not that rental or lease agreement is written. Property is not occupied by an individual in long-term care or the state hospital, with no spouse, disabled adult child, or child under age twenty-one at home, unless a physician has certified that the individual is likely to return home within six months.
- 21. "Poverty level" means the income official poverty line, as defined by the United States office of management and budget, and as revised annually in accordance with 42 U.S.C. 9902(2).
- 22. "Property that is essential to earning a livelihood" means property that a member of a medicaid unit owns, and which the medicaid unit is actively engaged in using to earn income, and where the total benefit of such income is derived for the medicaid unit's needs. A member of a medicaid unit is actively engaged in using the property if a member of the unit contributes significant current personal labor in using the property for income-producing purposes. The payment of social security taxes on the income from such current personal labor is an indicator of the active use of the property.
- 23. "Property that is not saleable without working an undue hardship" means property which the owner has made a good-faith effort to sell which has produced no buyer willing to pay an amount equaling or exceeding seventy-five percent of the property's fair market value, or sixty-six and two-thirds percent of the property's fair market value with respect to determination of qualified disabled and working individual benefits under section 75-02-02.1-23, and which is continuously for sale. Property may not be included within this definition at any time earlier than the first day of the first month in which a good-faith effort to sell is begun or if a bona fide offer is received by the third month after the month in which the good-faith effort to sell is begun.
- 24. "Regulation", as used in 42 CFR 431.210, 431.244, and 435.912, includes any written statement of federal or state law or policy, including, but not limited to, federal and state constitutions, statutes, regulations, rules, policy manuals or directives, policy letters or instructions, and relevant controlling decisions of federal or state courts.
- 25. "Remedial services" means those services, provided in specialized facilities, which produce the maximum reduction of physical or mental



disability and restoration of the facilities' residents to the residents' best possible level of functioning.

26. "Residing in the home" refers to individuals who are physically present, individuals who are temporarily absent, or individuals attending educational facilities.
27. "Specialized facility" means a residential facility, including a basic care facility, a licensed family foster care home for children or adults, a licensed group foster care home for children or adults, a transitional living facility, a facility established to provide quarters to clients of a sheltered workshop, and any other facility determined by the department to be a provider of remedial services, but does not mean an acute care facility or a nursing facility.
28. "State agency" means the North Dakota department of human services.
29. "Supplemental security income" means a program administered under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
30. "Temporary assistance for needy families" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Act [42 U.S.C. 601 et seq.].
31. "The Act" means the Social Security Act [42 U.S.C. 301 et seq.].
32. "Title II" means title II of the Social Security Act [42 U.S.C. 401 et seq.].
33. "Title IV-E" means title IV-E of the Social Security Act [42 U.S.C. 670 et seq.].
34. "Title XIX" means title XIX of the Social Security Act [42 U.S.C. 1396 et seq.].

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; October 1, 1993; July 1, 2003; August 1, 2005; April 1, 2008; January 1, 2011.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-04. Screening of recipients of certain services.** All applicants or recipients who seek nursing care services in nursing facilities, swing-bed facilities, ~~institutions for mental disease,~~ or intermediate care facilities for the mentally retarded, or who seek home and community-based services, must demonstrate a medical necessity for the service sought on or prior to admission to a facility, upon application for medicaid while in a facility, or upon request for home and community-based services. That demonstration must be ~~based on a level of~~

~~care determination that is completed in a manner prescribed by the department through the department's established screening process.~~

**History:** Effective December 1, 1991; amended effective July 1, 2003; April 1, 2008; October 1, 2010; January 1, 2011.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-17. Application for other benefits.**

1. Applicants and recipients, including spouses and financially responsible parents, must take all necessary steps to obtain any annuities, pensions, retirement, and disability benefits to which they are entitled, unless they can show good cause for not doing so. Annuities, pensions, retirement, and disability benefits include veterans' compensation and pensions; old age, survivors, and disability insurance benefits; railroad retirement benefits; and unemployment compensation, but do not include needs-based payments.
2. Good cause under this section exists if receipt of the annuity, pension, retirement, or disability benefit would result in a loss of health insurance coverage.

**History:** Effective December 1, 1991; amended effective July 1, 2003; January 1, 2011.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-18. Citizenship and alienage.**

1. An applicant or recipient must be a United States citizen or an alien lawfully admitted for permanent residence. Acceptable documents to establish United States citizenship and naturalized citizen status are defined in 42 CFR 435.407.
2. For purposes of qualifying as a United States citizen, the United States includes the fifty states, the District of Columbia, Puerto Rico, Guam, the United States Virgin Islands, and the Northern Mariana Islands. Nationals from American Samoa or Swain's Island are also regarded as United States citizens for purposes of medicaid.
3. American Indians born in Canada, who may freely enter and reside in the United States, are considered to be lawfully admitted for permanent residence if at least one-half American Indian blood. A spouse or child of such an Indian, or a noncitizen individual whose membership in an Indian tribe or family is created by adoption, may not be considered to be lawfully admitted under this subsection unless the individual is of at least one-half American Indian blood by birth.



4. The following categories of aliens, while lawfully admitted for a temporary or specified period of time, are not eligible for medicaid, including emergency services, because of the temporary nature of their admission status:
  - a. Foreign government representatives on official business and their families and servants;
  - b. Visitors for business or pleasure, including exchange visitors;
  - c. Aliens in travel status while traveling directly through the United States;
  - d. Crewmen on shore leave;
  - e. Treaty traders and investors and their families;
  - f. Foreign students;
  - g. International organization representatives and personnel and their families and servants;
  - h. Temporary workers, including agricultural contract workers; and
  - i. Members of foreign press, radio, film, or other information media and their families.
5. Except for aliens identified in subsection 4, aliens who are not lawfully admitted for permanent residence in the United States are not eligible for medicaid, except for emergency services.
6. Aliens from the Federated States of Micronesia, the Marshall Islands, or Palau are lawfully admitted as permanent nonimmigrants and are not eligible for medicaid, except for emergency services.
7. Aliens who lawfully entered the United States for permanent residence before August 22, 1996, and who meet all other medicaid criteria may be eligible for medicaid.
8. The following categories of aliens who entered the United States for permanent residence on or after August 22, 1996, and who meet all other medicaid criteria may be eligible for medicaid as qualified aliens:
  - a. Honorably discharged veterans, aliens on active duty in the United States armed forces, and the spouse or unmarried dependent children of such individuals;
  - b. Refugees and asylees;

- c. Aliens whose deportation was withheld under section 243(h) of the Immigration and Naturalization Act;
  - d. Cuban and Haitian entrants;
  - e. Aliens admitted as Amerasian immigrants;
  - f. Victims of a severe form of trafficking;
  - g. ~~For the first eight months after entry into the United States,~~ Iraqi and Afghan aliens and family members who are admitted under section 101(a)(27) of the Immigration and Naturalization Act;
  - h. For the period paroled, aliens paroled into the United States for at least one year under section 212(d)(5) of the Immigration and Nationality Act;
  - i. Aliens granted conditional entry pursuant to section 203(a)(7) of the Immigration and Nationality Act in effect prior to April 1, 1980;
  - j. Aliens granted nonimmigrant status under section 101(a)(15)(T) of the Immigration and Nationality Act or who have a pending application that sets forth a prima facie case for eligibility for that nonimmigrant status;
  - k. Certain battered aliens and their children who have been approved or have a petition pending which sets forth a prima facie case as identified in 8 U.S.C. 1641(c), but only if the department determines there is a substantial connection between the battery and the need for the benefits to be provided; and
  - l. All other aliens, other than for emergency services, only after five years from the date they entered the United States, and then only if the individual is a lawful permanent resident who has been credited with forty qualifying quarters of social security coverage.
9. An alien who is not eligible for medicaid because of the time limitations or lack of forty qualifying quarters of social security coverage may be eligible to receive emergency services that are not related to an organ transplant procedure if:
- a. The alien has a medical condition, including labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:
    - (1) Placing health in serious jeopardy;
    - (2) Serious impairment to bodily functions; or



- (3) Serious dysfunction of any bodily organ or part;
- b. The alien meets all other eligibility requirements for medicaid except the requirements concerning furnishing social security numbers and verification of alien status; and
- c. The alien's need for the emergency service continues.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; January 1, 2010; January 1, 2011.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

**75-02-02.1-24. Spousal impoverishment prevention.**

- 1. For purposes of this section:
  - a. "Community spouse" means the spouse of an institutionalized spouse or the spouse of a home and community-based services spouse.
  - b. "Family member" means only minor or dependent children, dependent parents, or dependent siblings of the institutionalized spouse, home and community-based services spouse, or community spouse who are residing with the community spouse. For purposes of applying this definition, a family member is dependent only if that family member is, and may properly be, claimed as a dependent on the federal income tax return filed by the institutionalized spouse or home and community-based services spouse, or the community spouse, or filed jointly by both.
  - c. "Home and community-based services spouse" means an individual who:
    - (1) Requires care of the type provided in a nursing facility, but chooses to receive home and community-based services in the community; and
    - (2) Is married to a spouse who resides in the community at least one day of each month.
  - d. "Institutionalized spouse" means an individual who:
    - (1) Requires care in a medical institution, a nursing facility, a swing bed, or the state hospital and, at the beginning of the individual's institutionalization, was likely to be in the facility for at least thirty consecutive days even though the individual does not actually remain in the facility for thirty consecutive days; and

- (2) Is married to a spouse who resides in the community at least one day of each month.
  - e. "Monthly maintenance needs allowance" means for a community spouse, the greater of two thousand two hundred sixty-seven dollars per month or the minimum amount permitted under section 1924(d)(3) of the Act [42 U.S.C. 1396r-5(d)(3)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)].
- 2.
- a. At the request of an institutionalized spouse, a home and community-based services spouse, or a community spouse, at the beginning of the first continuous period of institutionalization of the institutionalized spouse, or the beginning of the first continuous period of receipt of home and community-based services by a home and community-based services spouse, and upon receipt of relevant documentation of assets, the total value described in subdivision b shall be assessed and documented.
  - b. There shall be computed, as of the beginning of the first continuous period of institutionalization of the institutionalized spouse, or as of the beginning of the first continuous period of receipt of home and community-based services by a home and community-based services spouse:
    - (1) The total value of the countable assets to the extent either the institutionalized spouse or the community spouse, or the home and community-based services spouse and the community spouse, has an ownership interest; and
    - (2) A spousal share, which is equal to one-half of all countable assets, but not less than the minimum amount permitted under section 1924(f)(2)(A)(i) of the Act [42 U.S.C. 1396r-5(f)(2)(A)(i)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)], and not more than the maximum amount permitted under section 1924(f)(2)(A)(ii)(II) of the Act [42 U.S.C. 1396r-5(f)(2)(A)(ii)(II)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)].
  - c. In determining the assets of the institutionalized spouse at the time of application, all countable assets held by the institutionalized spouse, the community spouse, or both, must be considered available to the institutionalized spouse to the extent they exceed the community spouse countable asset allowance.
  - d. In determining the assets of the home and community-based services spouse at the time of application, all countable assets held by the home and community-based services spouse, the community spouse, or both, must be considered available to the



home and community-based services spouse to the extent they exceed the community spouse asset allowance.

- e. During the continuous period in which the spouse is in an institution or receiving home and community-based services, and after the month in which an institutionalized spouse or a home and community-based services spouse is determined to be eligible for benefits under this chapter, no countable assets of the community spouse may be deemed available to the institutionalized spouse or home and community-based services spouse. Assets owned by the community spouse are not considered available to the institutionalized spouse or home and community-based services spouse during this continuous period of eligibility. A transfer of assets or income by the community spouse for less than fair market value is governed by section 75-02-02.1-33.1 and shall be considered in determining continuing eligibility of the institutionalized spouse or home and community-based services spouse.
- f. The institutionalized spouse or home and community-based services spouse is not ineligible by reason of assets determined under subdivision c or d to be available for the cost of care if:
  - (1) The institutionalized spouse or the home and community-based services spouse has assigned to the state any rights to support from the community spouse; or
  - (2) It is determined that a denial of eligibility would work an undue hardship because the presumption described in subsection 3 of section 75-02-02.1-25 has been rebutted.
- g. An institutionalized spouse or home and community-based services spouse is allowed the medically needy asset limit of three thousand dollars.
- h. An institutionalized spouse or a home and community-based services spouse is asset eligible if the total value of all countable assets owned by both spouses is less than the total of the community spouse countable asset allowance and the institutionalized spouse asset limit or home and community-based services asset limit, as applicable. The assets may be owned by either spouse provided that the requirements of subdivision i are complied with.
- i. ~~Within the limits provided by this subdivision, transfers from an~~ An institutionalized spouse or a home and community-based services spouse ~~to a~~ may transfer an amount equal to the community spouse ~~do not disqualify~~ countable asset allowance, but only

to the extent the assets of the institutionalized spouse or home and community-based services spouse from receipt of medicaid benefits are transferred to, or for the sole benefit of, the community spouse. Such transfers, when made by an individual who has otherwise qualified for medicaid benefits, must be completed before the next regularly scheduled redetermination of eligibility. During this period, such assets are not counted as available to the institutionalized spouse even though the assets are not yet transferred.

- (1) ~~An institutionalized spouse or a home and community-based services spouse may transfer an amount equal to the community spouse countable asset allowance, but only to the extent the assets of the institutionalized spouse are transferred to, or for the sole benefit of, the community spouse.~~
  - (2) When an eligible institutionalized spouse or home and community-based services spouse exceeds the asset limits due to an increase in the value of assets or the receipt of assets not previously owned, the institutionalized spouse or home and community-based services spouse may transfer additional assets to the community spouse equal to no more than the current community spouse countable asset allowance less the total value of assets owned by the community spouse, previously transferred to, or for the sole benefit of, the community spouse under paragraph 1, or previously transferred under this paragraph this subdivision.
  - (3) (2) If a transfer made under paragraph 1 or 2 this subdivision causes the total value of all assets owned by the community spouse immediately prior to the transfer under paragraph 1, plus the value of all assets transferred at any time under paragraph 1, plus the value of all assets transferred under paragraph 2 this subdivision, to equal or exceed the current community spouse asset allowance, no further transfer may be made under paragraph 2 1.
  - (4) (3) If a court has entered an order against an institutionalized spouse for the support of a community spouse, assets required by such order to be transferred, by the institutionalized spouse to the community spouse, may not be counted as available to the institutionalized spouse even though the assets are not yet transferred.
3. A community spouse may retain or receive assets, which do not exceed the community spouse countable asset allowance, for purposes of determining the medicaid eligibility of the institutionalized spouse. The community spouse countable asset allowance means the spousal



share determined under paragraph 2 of subdivision b of subsection 2, as adjusted pursuant to section 1924(g) of the Act [Pub. L. 105-33; 111 Stat. 549; 42 U.S.C. 1396r-5(g)] plus:

- a. Any additional amount transferred under a court order in the manner and for the purpose described in paragraph 4 of subdivision i of subsection 2; or
  - b. Any additional amount established through a fair hearing conducted under subsection 6.
4. Countable assets include all assets that are not specifically excluded. The provisions of section 75-02-02.1-28.1 governing asset exclusions apply to this section.
  5. Income calculations must consider income in the manner provided for in section 75-02-02.1-34, income considerations, section 75-02-02.1-37, unearned income, section 75-02-02.1-38, earned income, section 75-02-02.1-38.1, posteligibility treatment of income, section 75-02-02.1-38.2, disregarded income, section 75-02-02.1-39, income deductions, and section 75-02-02.1-40, income levels, except:
    - a. No income of the community spouse may be deemed available to an institutionalized spouse during any month in which an institutionalized spouse is in the institution, or to a home and community-based services spouse during any month in which that spouse receives home and community-based services; and
    - b. No institutionalized spouse may be income eligible for medicaid in any month in which that spouse's income, after all income disregards and deductions other than the deduction of amounts provided to a spouse or family member, exceed an amount equal to that individual's current monthly medical expenses, not covered by a third party, plus the medically needy income level for one.
  6. The provisions of this section describing the treatment of income and assets for the community spouse do not describe that treatment for the purposes of determining medicaid eligibility for the community spouse or for children of the community spouse.
  7. a. Notice must be provided of the amount of the community spouse income allowance, of the amount of any family allowances, of the method of computing the amount of the community spouse countable asset allowance, and of the right to a fair hearing respecting ownership or availability of income and assets, and the determination of the community spouse monthly income or countable asset allowance. The notice must be provided, upon a determination of medicaid eligibility of an institutionalized spouse, to both spouses, and upon a subsequent request by either spouse

or a representative acting on behalf of either spouse, to the spouse making the request.

- b. A community spouse, or an institutionalized spouse or a home and community-based services spouse, is entitled to a fair hearing under chapter 75-01-03 if application for medicaid has been made on behalf of the institutionalized spouse or home and community-based services spouse and either spouse is dissatisfied with a determination of:
  - (1) The community spouse monthly income allowance;
  - (2) The amount of monthly income otherwise available to the community spouse as determined in calculating the community spouse monthly income allowance;
  - (3) The computation of the spousal share of countable assets;
  - (4) The attribution of countable assets; or
  - (5) The determination of the community spouse countable asset allowance.
- c. Any hearing respecting the determination of the community spouse countable asset allowance must be held within thirty days of the request for the hearing.
- d. If either spouse establishes that the community spouse needs income, above the level provided by the monthly maintenance needs allowance, due to exceptional circumstances resulting in significant financial duress, the monthly maintenance needs allowance for that spouse must be increased to an amount adequate to provide necessary additional income.
- e. (1) If either spouse establishes that the assets included within the community spouse countable asset allowance generate an amount of income inadequate to raise the community spouse's income to the monthly maintenance needs allowance, to the extent that total assets permit, the community spouse countable asset allowance for that spouse must be increased to an amount adequate to provide such a monthly maintenance needs allowance. For purposes of calculations made under this subdivision, all income of the institutionalized spouse that could be made available to a community spouse, in accordance with the calculation of the community spouse monthly income allowance under this subsection, must be treated as having been made available before an additional amount of assets may be allocated to the community spouse under this subdivision.



- (2) To establish a need for an increased asset allowance under this subdivision, the applicant, recipient, or the community spouse must provide verification of all income and assets of the community spouse.
  - (3) The amount of assets adequate to provide a monthly maintenance needs allowance for the community spouse must be based on the cost of a single premium lifetime annuity selected by the department that provides monthly payments equal to the difference between the monthly maintenance needs allowance and other income of both spouses not generated by either spouse's countable assets.
  - (4) The monthly maintenance needs allowance amount upon which calculations under this subdivision are made must be the amount in effect upon filing of the appeal.
  - (5) The estimate of the cost of an annuity described in paragraph 3 must be substituted for the amount of assets attributed to the community spouse if the amount of assets previously determined is less than the estimate. If the amount of assets attributed to the community spouse prior to the hearing is greater than the estimate of the cost of an annuity described in paragraph 3, the attribution of assets to the community spouse made prior to the hearing must be affirmed.
  - (6) No applicant, recipient, or community spouse is required to purchase an annuity as a condition of the applicant or recipient's eligibility for medicaid benefits.
8. Any transfer of an asset or income is a disqualifying transfer under section 75-02-02.1-33.1 or 75-02-02.1-33.2, whether made by a community spouse, a home and community-based services spouse, or an institutionalized spouse, unless specifically authorized by this section. The income that may be received by or deemed provided to an ineligible community spouse, and the asset amounts that an ineligible community spouse may retain, are intended to allow that community spouse to avoid impoverishment. They are not intended to allow the community spouse to make transfers of assets or income, for less than adequate consideration, which would disqualify the institutionalized spouse or home and community-based services spouse, if made by

the institutionalized spouse or home and community-based services spouse.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; October 1, 1993; July 1, 2003; June 1, 2004; May 1, 2006; April 1, 2008; January 1, 2011.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02; 42 USC 1396r-5

**75-02-02.1-24.2. Eligibility for workers with disabilities.**

1. An individual shall be enrolled as a member of the workers with disabilities coverage if that individual:
  - a. Is gainfully employed;
  - b. Is at least sixteen, but less than sixty-five, years of age;
  - c. Is disabled as determined by the social security administration or the state review team;
  - d. Meets the requirements of this section; and
  - e. Is not in receipt of any other medicaid benefits under this chapter other than coverage as a qualified medicare beneficiary or a special low-income medicare beneficiary.
2. An individual may be regarded as gainfully employed only if, taking all factors into consideration, the individual shows that the activity asserted as employment:
  - a. Produces a product or service that someone would ordinarily be employed to produce and for which payment is received;
  - b. Reflects a relationship of employer and employee or producer and customer;
  - c. Requires the individual's physical effort for completion of job tasks, or, if the individual has the skills and knowledge to direct the activity of others, reflects the outcome of that direction; and
  - d. The employment setting is not primarily an evaluative or experiential activity.
3. Asset considerations provided under section 75-02-02.1-25, asset limits provided under section 75-02-02.1-26, exempt assets provided under section 75-02-02.1-27, and excluded assets provided under section 75-02-02.1-28.1 are applicable to the workers with disabilities



coverage except that each individual enrolled as a member of the workers with disabilities coverage group is allowed an additional ten thousand dollars in assets.

4. No Except for Indians who are exempt from cost-sharing under federal law, an individual who has not paid a one-time enrollment fee of one hundred dollars may not be enrolled.
5. Any individual who fails to pay the premium established under this section for three months shall be disenrolled and may not be reenrolled thereafter without first reestablishing eligibility under this section and paying all outstanding enrollment fees and premiums. Any month in which no premium is due shall not be counted as a month in which the individual failed to pay a premium.
6. Payments received by the department from an individual claiming eligibility under this section shall be credited first to unpaid enrollment fees and then to the oldest unpaid premium. The department shall credit payments on the day received, provided that credit for any payment made by an instrument that is not honored shall be reversed. The department may require any individual who has attempted payment by a dishonored instrument to make subsequent payments in a specified manner.
7. A monthly premium is due on the tenth day of each month for which coverage is sought and shall be equal to five percent of the individual's gross countable income. This requirement does not apply to Indians who are exempt from cost-sharing under federal law.
8. No individual may be found eligible under this section if the individual and the individual's family have total net income equaling or exceeding two hundred twenty-five percent of the poverty level.
9. This section becomes effective on the effective date of approved amendments to the medicaid state plan sufficient to secure federal financial participation in the cost of services provided to individuals found eligible under this section, remains effective as long as federal financial participation continues to be available and state law authorizes such coverage, and is thereafter ineffective.

**History:** Effective June 1, 2004; amended effective August 1, 2005; April 1, 2008; January 1, 2011.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02.7, 50-24.1-18.1

#### **75-02-02.1-24.3. Eligibility for children with disabilities.**

1. A child must be enrolled as a member of the children with disabilities coverage if that child:

- a. Is under age nineteen, including the month the child turns age nineteen;
  - b. Is disabled;
  - c. Meets the requirements of this section; and
  - d. Is not in receipt of any other medicaid benefits under this chapter.
2. As a condition of eligibility, a child must be enrolled in a health insurance policy if:
  - a. The child's family has an employer-based health insurance plan available to them; and
  - b. The employer pays at least fifty percent of the premium.
3. A monthly premium is due on the tenth day of each month for which coverage is sought and is equal to five percent of the family's gross countable income. This premium may be offset by any other health insurance premium the family pays for a health insurance plan that provides coverage for the individual claiming eligibility under this section. This subsection does not apply to Indians who are exempt from cost-sharing under federal law.
4. If the premium established for an individual's coverage under this section is not paid for three months, the individual will be disenrolled and may not be reenrolled without first reestablishing eligibility under this section and paying all outstanding premiums. Any month in which no payment is due may not be counted as a month in which the individual's premium failed to be paid.
5. Payments received by the department from or on behalf of an individual claiming eligibility under this section will be credited first to the oldest unpaid premium. The department will credit payments on the day received, provided that credit for any payment made by an instrument that is not honored will be reversed. The department may require any individual who has attempted payment by a dishonored instrument to make subsequent payments in a specified manner.
6. No individual may be found eligible under this section if the individual and the individual's family have total net income in excess of two hundred percent of the poverty level.
7. This section becomes effective March 1, 2008, remains effective as long as federal financial participation continues to be available and state law authorizes such coverage, and is thereafter ineffective.



8. For purposes of this section, "family" means any member of the medicaid unit who is a spouse, parent, financially responsible caretaker relative, sibling, or child of the individual requesting benefits under this section.

**History:** Effective April 1, 2008; amended effective January 1, 2011.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-31

**75-02-02.1-28. Excluded assets.** Except as provided in section 75-02-02.1-28.1, the following types of assets will be excluded in determining if the available assets of an applicant or recipient exceed asset limits:

1. Property that is essential to earning a livelihood.
  - a. Property may be excluded as essential to earning a livelihood only during months in which a member of the medicaid unit is actively engaged in using the property to earn a livelihood, or during months when the medicaid unit is not actively engaged in using the property to earn a livelihood, if the medicaid unit shows that the property has been in such use and there is a reasonable expectation that the use will resume:
    - (1) Within twelve months of the last use; or
    - (2) If the nonuse is due to the disabling condition of a member of the medicaid unit, within twenty-four months of the last use.
  - b. Property consisting of an ownership interest in a business entity that employs anyone whose assets are used to determine eligibility may be excluded as property essential to earning a livelihood if:
    - (1) The individual's employment is contingent upon ownership of the property; or
    - (2) There is no ready market for the property.
  - c. A ready market for property consisting of an ownership interest in a business entity exists if the interest may be publicly traded. A ready market does not exist if there are unreasonable limitations on the sale of the interest, such as a requirement that the interest be sold at a price substantially below its actual value or a requirement that effectively precludes competition among potential buyers.
  - d. Property currently enrolled in the conservation reserve program is considered to be property essential to earning a livelihood.
  - e. Property from which a medicaid unit is receiving only rental or lease income is not essential to earning a livelihood.

- f. Liquid assets, to the extent reasonably necessary for the operation of a trade or business, are considered to be property essential to earning a livelihood. Liquid assets may not otherwise be treated as essential to earning a livelihood.
- 2. Property which is not saleable without working an undue hardship. Such property may be excluded no earlier than the first day of the month in which good-faith attempts to sell are begun, and continues to be excluded only for so long as the asset continues to be for sale and until a bona fide offer for at least seventy-five percent of the property's fair market value is made. Good-faith efforts to sell must be repeated at least annually in order for the property to continue to be excluded.
  - a. Persons seeking to establish retroactive eligibility must demonstrate that good-faith efforts to sell were begun and continued in each of the months for which retroactive eligibility is sought. Information concerning attempts to sell, which demonstrate that an asset is not saleable without working an undue hardship, are relevant to establishing eligibility in the month in which the good-faith efforts to sell are begun, but are not relevant to months prior to that month and do not relate back to prior months.
    - (1) A good-faith effort to sell real property or a mobile home must be made for at least three calendar months in which no bona fide offer for at least seventy-five percent of the property's fair market value is received before the property can be shown to be not saleable without working an undue hardship.
    - (2) A good-faith effort to sell property other than real property, a mobile home, or an annuity must be made for at least thirty days in which no bona fide offer for at least seventy-five percent of the property's fair market value is received before the property can be shown to be not saleable without working an undue hardship.
  - b. Property may not be shown to be not saleable without working an undue hardship if the owner of the property fails to take action to collect amounts due and unpaid with respect to the property or otherwise fails to assure the receipt of regular and timely payments due with respect to the property.
- 3. a. Any prepayments or deposits up to the amount set by the department in accordance with state law and the medicaid state plan, which are designated by an applicant or recipient for the burial of the applicant or recipient. Earnings accrued on the total amount of the designated burial fund are excluded.



- (1) The burial fund must be identifiable and may not be commingled with other funds. Checking accounts are considered to be commingled.
- (2) The value of an irrevocable burial arrangement shall be considered toward the burial exclusion.
- (3) The prepayments on a whole life insurance policy or annuity are the premiums that have been paid.
- (4) Any fund, insurance, or other property given to another person or entity in contemplation that its value will be used to meet the burial needs of the applicant or recipient shall be considered part of the burial fund.
- (5) At the time of application, the value of a designated burial fund shall be determined by identifying the value of the prepayments which are subject to the burial exclusion and asset limit amounts.
- (6) Designated burial funds which have been decreased prior to application for medicaid shall be considered redesignated as the date of last withdrawal. The balance at that point shall be considered the prepayment amount and earnings from that date forward shall be disregarded.
- (7) Reductions made in a designated burial fund after eligibility is established must first reduce the amount of earnings.
- (8) An applicant shall be determined eligible for the three-month prior period when a burial fund is established at the time of application if the value of all assets are within the medicaid burial fund exclusion and asset limit amounts for each of the three prior months. Future earnings on the newly established burial fund must be excluded.

b. A burial plot for each family member.

4. Home replacement funds, derived from the sale of an excluded home, and if intended for the purchase of another excluded home, until the last day of the third month following the month in which the proceeds from the sale are received. This asset must be identifiable and not commingled with other assets.
5. Unspent assistance, and interest earned on unspent assistance, received under the Disaster Relief and Emergency Assistance Act of 1974 [Pub. L. 93-288] or some other federal statute, because of a presidentially declared major disaster, and comparable disaster assistance received from a state or local government, or from a

disaster assistance organization. This asset must be identifiable and not commingled with other assets.

6. Payments, interest earned on the payments, and in-kind items received for the repair or replacement of lost, damaged, or stolen exempt or excluded assets are excluded for nine months, and may be excluded for an additional twenty-one months, if circumstances beyond the person's control prevent the repair or replacement of the lost, damaged, or stolen assets, and keep the person from contracting for such repair or replacement. This asset must be identifiable and not commingled with other assets.
7. For nine months, beginning after the month of receipt, unspent assistance received from a fund established by a state to aid victims of crime, to the extent that the applicant or recipient demonstrates that such amount was paid in compensation for expenses incurred or losses suffered as a result of a crime. This asset must be identifiable and not commingled with other assets.
8. Payments from a fund established by a state as compensation for expenses incurred or losses suffered as a result of a crime. This asset must be identifiable and not commingled with other assets.
9. Payments made pursuant to the Confederate Tribes of the Colville Reservation Grand Coulee Dam Settlement Act, [Pub. L. 103-436; 108 Stat. 4577 et seq.]. This asset must be identifiable and not commingled with other assets.
10. Stock in regional or village corporations held by natives of Alaska issued pursuant to section 7 of the Alaska Native Claims Settlement Act, [Pub. L. 92-203; 42 U.S.C. 1606].
11. For nine months beginning after the month of receipt, any educational scholarship, grant, or award and any fellowship or gift, or portion of a gift, used to pay the cost of tuition and fees at any educational institution. This asset must be identifiable and not commingled with other assets.
12. For nine months beginning after the month of receipt, any income tax refund, any earned income tax credit refund, or any advance payments of earned income tax credit. This asset must be identifiable and not commingled with other assets.
13. Assets set aside, by a blind or disabled, but not an aged, supplemental security income recipient, as a part of a plan to achieve self-support which has been approved by the social security administration.
14. The value of a life estate.



15. Allowances paid to children of Vietnam veterans who are born with spina bifida. This asset must be identifiable and not commingled with other assets.
16. The value of mineral acres.
17. Funds, including interest accruing, maintained in an individual development account established under title IV of the Assets for Independence Act, as amended [Pub. L. 105-285; 42 U.S.C. 604, note].
18. Property connected to the political relationship between Indian tribes and the federal government which consists of:
  - a. Any Indian trust or restricted land, or any other property under the supervision of the secretary of the interior located on a federally recognized Indian reservation, including any federally recognized Indian tribe's pueblo or colony, and including Indian allotments on or near a reservation as designated and approved by the bureau of Indian affairs of the department of interior.
  - b. Property located within the most recent boundaries of a prior federal reservation, including former reservations in Oklahoma and Alaska native regions established by the Alaska Native Claims Settlement Act.
  - c. Ownership interests in rents, leases, royalties, or usage rights related to natural resources (including extraction of natural resources or harvesting of timber, other plants and plant products, animals, fish, and shellfish) resulting from the exercise of federally protected rights.
  - d. Property with unique Indian significance such as ownership interests in or usage rights to items not covered by subdivisions a through c that have unique religious, spiritual, traditional, or cultural significance, or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; August 1, 2005; April 1, 2008; January 1, 2010; January 1, 2011.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02, 50-24.1-02.3

**75-02-02.1-31.1. Trusts established by applicants, recipients, or their spouses after August 10, 1993.**

1. For purposes of determining an individual's eligibility under this chapter, subject to subsection 4, this section applies to a trust established by the individual after August 10, 1993. Subsections 1, 2, and 3 of section 75-02-02.1-31 apply to this section.
2. a. For purposes of this subsection, an individual shall be considered to have established a trust if assets of the individual were used, by someone with lawful authority over those assets, to form all or part of the corpus of the trust and if any of the following individuals established that trust other than by will:
  - (1) The individual;
  - (2) The individual's spouse;
  - (3) A person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or
  - (4) A person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.
- b. In the case of a trust the corpus of which includes assets of an individual, as determined under subdivision a, and assets of any other person or persons, the provisions of this subsection shall apply to the portion of the trust attributable to the assets of the individual.
- c. Subject to subsection 4, this section shall apply without regard to:
  - (1) The purposes for which a trust is established;
  - (2) Whether the trustees have or exercise any discretion under the trust;
  - (3) Any restrictions on when or whether distributions may be made from the trust; or
  - (4) Any restrictions on the use of distributions from the trust.
3. a. In the case of a revocable trust:
  - (1) The corpus of the trust shall be considered assets available to the individual;



- (2) Payments from the trust to or for the benefit of the individual shall be considered income of the individual; and
- (3) Any other payments from the trust shall be considered income or assets disposed of by the individual for purposes of section 75-02-02.1-33.1 or 75-02-02.1-33.2.

b. In the case of an irrevocable trust:

- (1) If there are any circumstances under which payment from the trust could be made to or for the benefit of the individual, the portion of the corpus from which, or the income on the corpus from which, payment to the individual could be made shall be considered available to the individual, and payments from that portion of the corpus or income:
  - (a) To or for the benefit of the individual, shall be considered income of the individual; and
  - (b) For any other purpose, shall be considered a transfer of income or assets by the individual subject to section 75-02-02.1-33.1; and
- (2) Any portion of the trust from which, or any income on the corpus from which, no payment could under any circumstances be made to the individual shall be considered, as of the date of establishment of the trust, or, if later, the date on which payment to the individual was foreclosed, to be income or assets disposed by the individual for purposes of section 75-02-02.1-33.1 or 75-02-02.1-33.2, and the value of the trust shall be determined for purposes of section 75-02-02.1-33.1 or 75-02-02.1-33.2 by including the amount of any payments made from such portion of the trust after such date.

4. This section shall not apply to:

- a. A trust containing the assets of an individual under age sixty-five who is disabled and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual, or a court, to the extent the person establishing the trust has lawful authority over the individual's assets, and if, under the terms of the trust, the department will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medicaid benefits paid under North Dakota Century Code chapter 50-24.1 on behalf of the individual; or
- b. A trust containing the assets of a disabled individual that meets the following conditions:

- (1) The trust is established and managed by a qualified nonprofit association that acts as trustee;
  - (2) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts;
  - (3) Accounts in the trust are established solely for the benefit of a disabled individual by the parent, grandparent, or legal guardian of the individual, by the individual, or by a court; and
  - (4) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the department from such remaining amounts in the account an amount equal to the total amount of medicaid benefits paid under North Dakota Century Code chapter 50-24.1 on behalf of the beneficiary.
5. The department may waive application of this section as creating an undue hardship if the individual establishes that some other person, not currently receiving medicaid, ~~food stamps~~ supplemental nutrition assistance program benefits, temporary assistance for needy families benefits, or low-income home energy assistance program benefits, would become eligible for such benefits because of and upon application of this section, and that the cost of those benefits, provided to that other person, exceeds the cost of medicaid benefits available to the individual if application is waived.
6. For purposes of this section "income" and "assets" include all income and assets of the individual and of the individual's spouse, including any income or assets that the individual or the individual's spouse is entitled to, but does not receive because of action:
  - a. By the individual or the individual's spouse;
  - b. By a person, including a court or administrative body, with legal authority to act in place of or on behalf of the individual or the individual's spouse; or
  - c. By any person, including any court or administrative body, acting at the direction or upon the request of the individual or the individual's spouse.
7. A trust is established, with respect to any asset that is a part of the trust corpus, on the date that asset is made subject to the trust by an effective transfer to the trustee.



8. A nonprofit association is qualified to establish and manage a trust described in subdivision b of subsection 4 only if the nonprofit corporation:
- a. Is organized and operated exclusively for other than profit-making purposes and distributes no part of the corporation's income to its members;
  - b. Is qualified to receive charitable donations for which a taxpayer may lawfully claim a deduction under the provisions of section 501(c)(3) of the Internal Revenue Code [26 U.S.C. 501(c)(3)];
  - c. Has a governing board that includes no more than twenty percent membership related to any one disabled individual with an account maintained in the trust:
    - (1) As a parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, stepbrother, stepsister, great-grandparent, great-grandchild, aunt, uncle, niece, nephew, great-great-grandparent, great-great-grandchild, great-aunt, great-uncle, first cousin, grandniece, or grandnephew, whether by birth or adoption, and whether by whole or half-blood, of the disabled individual or the disabled individual's current or former spouse; or
    - (2) As agent or fiduciary of any kind except with respect to the trust established and managed by the nonprofit association.
  - d. Has no employee or agent whose compensation is in any way related to or conditioned upon the amount or nature of funds retained by the trust from the account of any deceased beneficiary;
  - e. Complies with the provisions of North Dakota Century Code section 10-33-12, whether or not incorporated or doing business in North Dakota; and
  - f. Retains funds from a deceased beneficiary's account only if:
    - (1) The retained funds are to compensate the trust for services rendered;
    - (2) The account is that of a beneficiary who was a disabled individual who did not receive benefits under this chapter; or

- (3) The account does not contain the assets of a disabled individual.

**History:** Effective October 1, 1993; amended effective July 1, 2003; April 1, 2008; January 1, 2011.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02; 42 USC 1396p(d)

**75-02-02.1-32. Valuation of assets.** It is not always possible to determine the value of assets with absolute certainty, but it is necessary to determine a value in order to determine eligibility. The valuation must be based on reasonably reliable information. It is the responsibility of the applicant or recipient, or the persons acting on behalf of the applicant or recipient, to furnish reasonably reliable information. Because an applicant or recipient may not be knowledgeable of asset values, and particularly because that person may have a strong interest in the establishment of a particular value, whether or not that value is accurate, some verification of value must be obtained. If a valuation from a source offered by an applicant or recipient is greatly different from generally available or published sources, the applicant or recipient must provide a convincing explanation for the differences particularly if the applicant or recipient may be able to influence the person providing the valuation. If reasonably reliable information concerning the value of assets is not made available, eligibility may not be determined. Useful sources of verification include:

1. With respect to liquid assets: reliable account records.
2. With respect to personal property other than liquid assets:
  - a. Publicly traded stocks, bonds, and securities: stockbrokers.
  - b. Autos, trucks, mobile homes, boats, farm equipment, or any other property listed in published valuation guides accepted in the trade: the valuation guide.
  - c. With respect to harvested grains or produce: grain buyers, grain elevator operators, produce buyers; and, for crops grown on contract: the contract.
  - d. With respect to stock in corporations not publicly traded: appraisers, accountants.
  - e. With respect to other personal property: dealers and buyers of that property.
  - f. With respect to a life insurance policy: the life insurance company.
3. Real property.



- a. With respect to mineral interests: ~~appraisers, specializing in minerals, mineral buyers, geologists.~~
    - (1) If determining current value, the best offer received following a good-faith effort to sell the mineral interests. A good-faith effort to sell means offering the mineral interests to at least three companies purchasing mineral rights in the area, or by offering for bids through public advertisement.
    - (2) If determining a past value for mineral rights previously sold or transferred:
      - (a) If producing, the value is an amount equal to three times the annual royalty income based on actual royalty income from the thirty-six months following the transfer, or if thirty-six months have not yet passed, based on actual royalty income in the months that have already passed plus an estimate for the remainder of the thirty-six-month period.
      - (b) If not producing, but the mineral rights are leased, the value is an amount equal to two times the total lease amount; or
      - (c) If not leased, the value is an amount equal to the greater of two times the estimated lease amount or the potential sale value of the mineral rights, as determined by a geologist, mineral broker, or mineral appraiser.
    - (3) In determining current or past value, an applicant, recipient, or the department may provide persuasive evidence establishing a value different from the value established using the process described in this subdivision.
  - b. With respect to agricultural lands: appraisers, real estate agents dealing in the area, loan officers in local agricultural lending institutions, and other persons known to be knowledgeable of land sales in the area in which the lands are located, but not the "true and full" value from tax records.
  - c. With respect to real property other than mineral interests and agricultural lands: market value or "true and full" value from tax records, whichever represents a reasonable approximation of fair market value; real estate agents dealing in the area; and loan officers in local lending institutions.
4. Divided or partial interests. Divided or partial interests include assets held by the applicant or recipients; jointly or in common with persons who are not in the medicaid unit; assets where the applicant or recipient

or other persons within the medicaid unit own only a partial share of what is usually regarded as the entire asset; and interests where the applicant or recipient owns only a life estate or remainder interest in the asset.

- a. Liquid assets. The value of a partial or shared interest in a liquid asset is equal to the total value of that asset.
- b. Personal property other than liquid assets and real property other than life estates and remainder interests. The value of a partial or shared interest is a proportionate share of the total value of the asset equal to the proportionate share of the asset owned by the applicant or recipient.
- c. Life estates and remainder interests.

- (1) The life estate and remainder interest tables must be used to determine the value of a life estate or remainder interest. In order to use the table, it is necessary to first know the age of the life tenant or, if there are more than one life tenants, the age of the youngest life tenant; and the fair market value of the property which is subject to the life estate or remainder interest. The value of a life estate is found by selecting the appropriate age in the table and multiplying the corresponding life estate decimal fraction times the fair market value of the property. The value of a remainder interest is found by selecting the appropriate age of the life tenant in the table and multiplying the corresponding remainder interest decimal fraction times the fair market value of the property.

#### Life Estate and Remainder Interest Table

<u>Age</u>	<u>Life Estate</u>	<u>Remainder Interest</u>
0	.97188	.02812
1	.98988	.01012
2	.99017	.00983
3	.99008	.00992
4	.98981	.01019
5	.98938	.01062
6	.98884	.01116
7	.98822	.01178
8	.98748	.01252
9	.98663	.01337



10	.98565	.01435
11	.98453	.01547
12	.98329	.01671
13	.98198	.01802
14	.98066	.01934
15	.97937	.02063
16	.97815	.02185
17	.97700	.02300
18	.97590	.02410
19	.97480	.02520
20	.97365	.02635
21	.97245	.02755
22	.97120	.02880
23	.96986	.03014
24	.96841	.03159
25	.96678	.03322
26	.96495	.03505
27	.96290	.03710
28	.96062	.03938
29	.95813	.04187
30	.95543	.04457
31	.95254	.04746
32	.94942	.05058
33	.94608	.05392
34	.94250	.05750
35	.93868	.06132
36	.93460	.06540
37	.93026	.06974
38	.92567	.07433
39	.92083	.07917

40	.91571	.08429
41	.91030	.08970
42	.90457	.09543
43	.89855	.10145
44	.89221	.10779
45	.88558	.11442
46	.87863	.12137
47	.87137	.12863
48	.86374	.13626
49	.85578	.14422
50	.84743	.15257
51	.83674	.16126
52	.82969	.17031
53	.82028	.17972
54	.81054	.18946
55	.80046	.19954
56	.79006	.20994
57	.77931	.22069
58	.76822	.23178
59	.75675	.24325
60	.74491	.25509
61	.73267	.26733
62	.72002	.27998
63	.70696	.29304
64	.69352	.30648
65	.67970	.32030
66	.66551	.33449
67	.65098	.34902
68	.63610	.36390
69	.62086	.37914
70	.60522	.39478



71	.58914	.41086
72	.57261	.42739
73	.55571	.44429
74	.53862	.46138
75	.52149	.47851
76	.50441	.49559
77	.48742	.51258
78	.47049	.52951
79	.45357	.54643
80	.43659	.56341
81	.41967	.58033
82	.40295	.59705
83	.38642	.61358
84	.36998	.63002
85	.35359	.64641
86	.33764	.66236
87	.32262	.67738
88	.30859	.69141
89	.29526	.70474
90	.28221	.71779
91	.26955	.73045
92	.25771	.74229
93	.24692	.75308
94	.23728	.76272
95	.22887	.77113
96	.22181	.77819
97	.21550	.78450
98	.21000	.79000
99	.20486	.79514
100	.19975	.80025
101	.19532	.80468

102	.19054	.80946
103	.18437	.81563
104	.17856	.82144
105	.16962	.83038
106	.15488	.84512
107	.13409	.86591
108	.10068	.89932
109	.04545	.95455

- (2) The life estate and remainder interest tables are based on the anticipated lifetimes of individuals of a given age according to statistical tables of probability. If the life tenant suffers from a condition likely to cause death at an unusually early age, the value of the life estate decreases and the value of the remainder interest increases. An individual who requires long-term care, who suffers from a condition that is anticipated to require long-term care within twelve months, or who has been diagnosed with a disease or condition likely to reduce the individual's life expectancy is presumed to suffer from a condition likely to cause death at an unusually early age, and may not rely upon statistical tables of probability applicable to the general population to establish the value of a life estate or remainder interest. If an individual is presumed to suffer from a condition likely to cause death at an unusually early age, an applicant or recipient whose eligibility depends upon establishing the value of a life estate or remainder interest must provide a reliable medical statement that estimates the remaining duration of life in years. The estimated remaining duration of life may be used, in conjunction with a life expectancy table, to determine the comparable age for application of the life estate and remainder interest table.

5. Contractual rights to receive money payments:

- a. Except during any disqualifying transfer penalty period as provided in established by subdivision d, the value of contractual rights to receive money payments in which payments are current is an amount equal to the total of all outstanding payments of principal required to be made by the contract unless evidence is furnished that establishes a lower value.
- b. Except during any disqualifying transfer penalty period as provided in established by subdivision d, the value of contractual rights to



receive money payments in which payments are not current is the current fair market value of the property subject to the contract.

- c. Except during any disqualifying transfer penalty period as provided in established by subdivision d, if upon execution the total of all principal payments required under the terms of the contract is less than the fair market value of the property sold, the difference is a disqualifying transfer governed by section 75-02-02.1-33.1 or 75-02-02.1-33.2, and the value of the contract is determined under subdivision a or b.
- d. A contractual right to receive money payments that consists of a promissory note, loan, or mortgage is a disqualifying transfer governed by section 75-02-02.1-33.2 of an amount equal to the outstanding balance due as of the date the lender or purchaser, or the lender's or purchaser's spouse, first applies for medicaid to secure nursing care services, as defined in section 75-02-02.1-33.2, if:
  - (1) Any payment on the contract is due after the end of the contract payee's life expectancy as established in accordance with actuarial publications of the office of the chief actuary of the social security administration;
  - (2) The contract provides for other than equal payments or for any balloon or deferred payment; or
  - (3) The contract provides for any payment otherwise due to be diminished after the contract payee's death.
- e. The value of a secured contractual right to receive money payments that consists of a promissory note, loan, or mortgage not described in subdivision d shall be determined under subdivision a or b. For an unsecured note, loan, or mortgage, the value is the outstanding payments of principal and overdue interest unless evidence is furnished that establishes a lower value.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; April 1, 2008; January 1, 2010; January 1, 2011.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

**75-02-02.1-33.2. Disqualifying transfers made on or after February 8, 2006.**

- 1. This section applies to transfers of income or assets made on or after February 8, 2006.

2. Except as provided in subsections 6 and 15, an individual is ineligible for skilled nursing care, swing-bed, or home and community-based benefits if the individual or the individual's spouse disposes of assets or income for less than fair market value on or after the look-back date. The look-back date is a date that is sixty months before the first date on which the individual is both receiving skilled nursing care, swing-bed, or home and community-based services and has applied for benefits under this chapter, without regard to the action taken on the application.
3. An applicant, recipient, or anyone acting on behalf of an applicant or recipient, has a duty to disclose any transfer of any asset or income made by or on behalf of the applicant or recipient, or the spouse of the applicant or recipient, for less than full fair market value:
  - a. When making an application;
  - b. When completing a redetermination; and
  - c. If made after eligibility has been established, by the end of the month in which the transfer was made.
4. The date that a period of ineligibility begins is the latest of:
  - a. The first day of the month in which the income or assets were transferred for less than fair market value;
  - b. The first day on which the individual is receiving nursing care services and would otherwise have been receiving benefits for institutional care but for the penalty; or
  - c. The first day thereafter which is not in a period of ineligibility.
5.
  - a. The number of months and days of ineligibility for an individual shall be equal to the total cumulative uncompensated value of all income and assets transferred by the individual, or individual's spouse, on or after the look-back date divided by the average monthly cost or average daily cost, as appropriate, of nursing facility care in North Dakota at the time of the individual's first application.
  - b. A fractional period of ineligibility may not be rounded down or otherwise disregarded with respect to any disposal of assets or income for less than fair market value.
  - c. Notwithstanding any contrary provisions of this section, in the case of an individual or an individual's spouse who makes multiple fractional transfers of assets or income in more than one month for less than fair market value on or after the look-back date established under subsection 2, the period of ineligibility



applicable to such individual must be determined by treating the total, cumulative uncompensated value of all assets or income transferred during all months on or after the look-back date as one transfer and one penalty period must be imposed beginning on the earliest date applicable to any of the transfers.

6. For purposes of this section, "assets" includes the purchase of a life estate interest in another individual's home unless the purchaser resides in the home for a period of at least one year after the date of the purchase.
7. ~~Except as limited by subdivision i of subsection 2 of section 75-02-02.1-24, an~~ An individual ~~shall~~ may not be ineligible for medicaid by reason of subsection 1 to the extent that:
  - a. The assets transferred were a home, and title to the home was transferred to:
    - (1) The individual's spouse;
    - (2) The individual's son or daughter who is under age twenty-one, blind, or disabled;
    - (3) The individual's brother or sister who has an equity interest in the individual's home and who was residing in the individual's home for a period of at least one year immediately before the date the individual became an institutionalized individual; or
    - (4) The individual's son or daughter, other than a child described in paragraph 2, who was residing in the individual's home for a period of at least two years immediately before the date the individual began receiving nursing care services, and who provided care to the individual which permitted the individual to avoid receiving nursing care services;
  - b. The income or assets:
    - (1) Were transferred to the individual's spouse or to another for the sole benefit of the individual's spouse;
    - (2) Were transferred from the individual's spouse to another for the sole benefit of the individual's spouse;
    - (3) Were transferred to, or to a trust established solely for the benefit of, the individual's child who is blind or disabled; or
    - (4) Were transferred to a trust established solely for the benefit of an individual less than sixty-five years of age who is disabled;

- c. The individual makes a satisfactory showing that:
    - (1) The individual intended to dispose of the income or assets, either at fair market value or other valuable consideration, and the individual had an objectively reasonable belief that fair market value or its equivalent was received;
    - (2) The income or assets were transferred exclusively for a purpose other than to qualify for medicaid; or
    - (3) For periods after the return, all income or assets transferred for less than fair market value have been returned to the individual; or
  - d. The asset transferred was an asset excluded or exempted for medicaid purposes other than:
    - (1) The home or residence of the individual or the individual's spouse;
    - (2) Property that is not saleable without working an undue hardship;
    - (3) Excluded home replacement funds;
    - (4) Excluded payments, excluded interest on those payments, and excluded in-kind items received for the repair or replacement of lost, damaged, or stolen exempt or excluded assets;
    - (5) Life estate interests;
    - (6) Mineral interests;
    - (7) An asset received from a decedent's estate during any period it is considered to be unavailable under subsection 5 of section 75-02-02.1-25; or
    - (8) An annuity.
8. a. An individual shall not be ineligible for medicaid by reason of subsection 2 to the extent the individual makes a satisfactory showing that an undue hardship exists for the individual. Upon imposition of a period of ineligibility because of a transfer of assets or income for less than fair market value, the department shall notify the applicant or recipient of the right to request an undue hardship exception. An individual may apply for an exception to the transfer of asset penalty if the individual claims that the ineligibility period will cause an undue hardship to the individual. A



request for a determination of undue hardship must be made within ninety days after the circumstances upon which the claim of undue hardship is made were known or should have been known to the affected individual or the person acting on behalf of that individual if incompetent. The individual must provide to the department sufficient documentation to support the claim of undue hardship. The department shall determine whether a hardship exists upon receipt of all necessary documentation submitted in support of a request for a hardship exception. An undue hardship exists only if the individual shows that all of the following conditions are met:

- (1) Application of the period of ineligibility would deprive the individual of food, clothing, shelter, or other necessities of life or would deprive the individual of medical care such that the individual's health or life would be endangered;
- (2) The individual who transferred the assets or income, or on whose behalf the assets or income were transferred, has exhausted all lawful means to recover the assets or income or the value of the transferred assets or income, from the transferee, a fiduciary, or any insurer;
- (3) A person who would otherwise provide care would have no cause of action, or has exhausted all causes of action, against the transferee of the assets or income of the individual or the individual's spouse under North Dakota Century Code chapter 13-02.1, the Uniform Fraudulent Transfers Act, or any substantially similar law of another jurisdiction; and
- (4) The individual's remaining available assets and the remaining assets of the individual's spouse are less than the asset limit in subsection 1 of section 75-02-02.1-26 counting the value of all assets except:
  - (a) A home, exempt under section 75-02-02.1-27, but not if the individual or the individual's spouse has equity in the home in excess of twenty-five percent of the amount established in the approved state plan for medical assistance which is allowed as the maximum home equity interest for nursing facility services or other long-term care services;
  - (b) Household and personal effects;
  - (c) One motor vehicle if the primary use is for transportation of the individual, or the individual's spouse or minor, blind, or disabled child who occupies the home; and

- (d) Funds for burial up to the amount excluded in subsection 3 of section 75-02-02.1-28 for the individual and the individual's spouse.
  - b. Upon the showing required by this subsection, the department shall state the date upon which an undue hardship begins and, if applicable, when it ends.
  - c. The agency shall terminate the undue hardship exception, if not earlier, at the time an individual, the spouse of the individual, or anyone with authority to act on behalf of the individual, makes any uncompensated transfer of income or assets after the undue hardship exception is granted. The agency shall deny any further requests for an undue hardship exception due to either the disqualification based on the transfer upon which the initial undue hardship determination was based, or a disqualification based on any subsequent transfer.
- 9. If a request for an undue hardship waiver is denied, the applicant or recipient may request a fair hearing in accordance with the provisions of chapter 75-01-03.
- 10. There is a presumption that a transfer for less than fair market value was made for purposes that include the purpose of qualifying for medicaid:
  - a. In any case in which the individual's assets and the assets of the individual's spouse remaining after the transfer produce income which, when added to other income available to the individual and to the individual's spouse, total an amount insufficient to meet all living expenses and medical costs reasonably anticipated to be incurred by the individual and by the individual's spouse in the month of transfer and in the fifty-nine months following the month of transfer;
  - b. In any case in which an inquiry about medicaid benefits was made, by or on behalf of the individual to any person, before the date of the transfer;
  - c. In any case in which the individual or the individual's spouse was an applicant for or recipient of medicaid before the date of transfer;
  - d. In any case in which a transfer is made by or on behalf of the individual or the individual's spouse, if the value of the transferred income or asset, when added to the value of the individual's other countable assets, would exceed the asset limits in section 75-02-02.1-26; or
  - e. In any case in which the transfer was made, on behalf of the individual or the individual's spouse, by a guardian, conservator,



or attorney in fact, to a relative of the individual or the individual's spouse, or to the guardian, conservator, or attorney in fact or to any parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, stepbrother, stepsister, great-grandparent, great-grandchild, aunt, uncle, niece, or nephew, whether by birth, adoption, and whether by whole or half-blood, of the guardian, conservator, or attorney in fact or the spouse or former spouse of the guardian, conservator, or attorney in fact.

11. An applicant or recipient who claims that income or assets were transferred exclusively for a purpose other than to qualify for medicaid must show that a desire to receive medicaid benefits played no part in the decision to make the transfer and must rebut any presumption arising under subsection 10. The fact, if it is a fact, that the individual would be eligible for the medicaid coverage for nursing care services, had the individual or the individual's spouse not transferred income or assets for less than fair market value, is not evidence that the income or assets were transferred exclusively for a purpose other than to qualify for medicaid.
12. If a transfer results in a period of ineligibility under this section for an individual receiving nursing care services, and if the individual's spouse is otherwise eligible for medicaid and requires nursing care services, the remaining period of ineligibility shall be apportioned equally between the spouses. If one such spouse dies or stops receiving nursing care services, any months remaining in that spouse's apportioned period of ineligibility must be assigned or reassigned to the spouse who continues to receive nursing care services.
13. No income or asset transferred to a parent, stepparent, child, stepchild, grandparent, grandchild, brother, sister, stepsister, stepbrother, great-grandparent, great-grandchild, aunt, uncle, niece, or nephew of the individual or the individual's spouse, purportedly for services or assistance furnished by the transferee to the individual or the individual's spouse, may be treated as consideration for the services or assistance furnished unless:
  - a. The transfer is made pursuant to a valid written contract entered into prior to rendering the services or assistance;
  - b. The contract was executed by the individual or the individual's fiduciary who is not a provider of services or assistance under the contract;
  - c. Compensation is consistent with rates paid in the open market for the services or assistance actually provided; and
  - d. The parties' course of dealing included paying compensation upon rendering services or assistance, or within thirty days thereafter.

14. A transfer is complete when the individual or the individual's spouse making the transfer has no lawful means of undoing the transfer or requiring a restoration of ownership.
15. For purposes of this section:
  - a. "Annuity" means a policy, certificate, contract, or other arrangement between two or more parties whereby one party pays money or other valuable consideration to the other party in return for the right to receive payments in the future, but does not mean an employee benefit that qualifies for favorable tax treatment under the Internal Revenue Code or a plan described in the Internal Revenue Code as a retirement plan under which contributions must end and withdrawals must begin by age seventy and one-half.
  - b. "Average monthly cost of nursing facility care" means the cost determined by the department under section 1917(c)(1)(E)(i)(II) of the Act [42 U.S.C. 1396p(c)(1)(E)(i)(II)].
  - c. "Fair market value" means:
    - (1) In the case of a liquid asset that is not subject to reasonable dispute concerning its value, such as cash, bank deposits, stocks, and fungible commodities, one hundred percent of apparent fair market value;
    - (2) In the case of real or personal property that is subject to reasonable dispute concerning its value:
      - (a) If conveyed in an arm's-length transaction to someone not in a confidential relationship with the individual or anyone acting on the individual's behalf, seventy-five percent of estimated fair market value; or
      - (b) If conveyed to someone in a confidential relationship with the individual or anyone acting on the individual's behalf, one hundred percent of estimated fair market value; and
    - (3) In the case of income, one hundred percent of apparent fair market value.
  - d. "Major medical policy" includes any policy, certificate, or subscriber contract issued on a group or individual basis by any insurance company, nonprofit health service organization, fraternal benefit society, or health maintenance organization, which provides a plan of health insurance or health benefit coverage, including medical, hospital, and surgical care, approved for issuance by the insurance regulatory body in the state of issuance, but does not



include accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, coverage issued as a supplement to liability insurance or automobile medical payment insurance, or a policy or certificate of specified disease, hospital confinement indemnity, or limited benefit health insurance.

- e. "Medicare" means the Health Insurance for the Aged and Disabled Act, title XVIII of the Social Security Act of 1965, as amended [42 U.S.C. 1395 et seq; Pub. L. 92-603; 86 Stat. 1370].
- f. "Medicare supplement policy offering plan F benefits" means a policy, group, or individual accident and health insurance policy or a subscriber contract of a health service corporation or a health care plan of a health maintenance organization or preferred provider organization, other than a policy issued pursuant to a contract under section 1876 or 1833 of the Social Security Act [42 U.S.C. 1395 et seq.] or an issued policy under a demonstration project authorized pursuant to amendments to the Social Security Act that:
  - (1) Is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare;
  - (2) Is not a policy or contract of one or more employers or labor organizations, or the trustees of a fund established by one or more employers or labor organizations, or combination thereof, for employees or former employees, or combination thereof, or for members or former members, or combination thereof, of the labor organization;
  - (3) Is approved for issuance by the insurance regulatory body in the state of issuance; and
  - (4) Includes:
    - (a) Hospitalization benefits consisting of medicare part A coinsurance plus coverage for three hundred sixty-five additional days after medicare benefits end;
    - (b) Medical expense benefits consisting of medicare part B coinsurance;
    - (c) Blood provision consisting of the first three pints of blood each year;
    - (d) Skilled nursing coinsurance;

- (e) Medicare part A deductible coverage;
  - (f) Medicare part B deductible coverage;
  - (g) Medicare part B excess benefits at one hundred percent coverage; and
  - (h) Foreign travel emergency coverage.
- g. "Nursing care services" means nursing care provided in a medical institution, a nursing facility, a swing-bed, the state hospital, or a home and community-based services setting.
- h. "Relative" means a parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, stepbrother, stepsister, great-grandparent, great-grandchild, aunt, uncle, niece, nephew, great-great-grandparent, great-great-grandchild, great-aunt, great-uncle, first cousin, grandniece, or grandnephew, whether by birth or adoption, and whether by whole or half-blood, of the individual or the individual's current or former spouse.
- i. "Someone in a confidential relationship" includes an individual's attorney in fact, guardian, conservator, legal custodian, caretaker, trustee, attorney, accountant, or agent, and may include a relative or other person with a close and trusted relationship to the individual.
- j. "Uncompensated value" means the difference between fair market value and the value of any consideration received.
- 16. The provisions of this section do not apply in determining eligibility for medicare savings programs.
- 17. An individual disposes of assets or income when the individual, or anyone on behalf of the individual or at the request of the individual, acts or fails to act in a manner that effects a transfer, conveyance, assignment, renunciation, or disclaimer of any asset or income in which the individual had or was entitled to claim an interest of any kind.
- 18. An individual who disposes of assets or income to someone in a confidential relationship is presumed to have transferred the assets or income to an implied trust in which the individual is the beneficiary and which is subject to treatment under section 75-02-02.1-31.1. The presumption may be rebutted only if the individual shows:
  - a. The compensation actually received by the individual for the assets or income disposed of was equal to at least one hundred percent of fair market value, in which case this section has no application; or



- b. The individual, having capacity to contract, disposed of the assets or income with full knowledge of the motives of the transferee and all other facts concerning the transaction which might affect the individual's own decision and without the use of any influence on the part of the transferee, in which case the transaction is governed by this section.
- 19. An individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid if, for a period of at least thirty-six consecutive months, beginning on the date the asset was transferred, the individual has in force home care and long-term care coverage, purchased on or before July 31, 2003, with a daily benefit at least equal to 1.25 times the average daily cost of nursing care for the year in which the policy is issued or an aggregate benefit at least equal to 1,095 times that daily benefit, and:
  - a. For each such month during which the individual is not eligible for medicare benefits, the individual has in force a major medical policy that provides a lifetime maximum benefit of one million dollars or more, an annual aggregate deductible of five thousand dollars or less, and an out-of-pocket maximum annual expenditure per qualifying individual of five thousand dollars or less; and
  - b. For each such month during which the individual is eligible for medicare benefits, the individual has in force a medicare supplement policy offering plan F benefits, or their equivalent.
- 20. An individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid if, for a period of at least thirty-six consecutive months, beginning on the date the asset was transferred, the individual has in force home health care coverage, assisted living coverage, basic care coverage, and skilled nursing facility coverage, purchased on or after August 1, 2003, and before January 1, 2007, with a daily benefit at least equal to 1.57 times the average daily cost of nursing care for the year in which the policy is issued or an aggregate benefit at least equal to 1,095 times that daily benefit, and:
  - a. For each month during which the individual is not eligible for medicare benefits, the individual has in force a major medical policy that provides a lifetime maximum benefit of one million dollars or more, an annual aggregate deductible of five thousand dollars or less, and an out-of-pocket maximum annual expenditure per qualifying individual of five thousand dollars or less; and
  - b. For each such month during which the individual is eligible for medicare benefits, the individual has in force a medicare supplement policy offering plan F benefits, or their equivalent.

21. With respect to an annuity transaction which includes the purchase of, selection of an irrevocable payment option, addition of principal to, elective withdrawal from, request to change distribution from, or any other transaction that changes the course of payments from an annuity which occurs on or after February 8, 2006, an individual may demonstrate that an asset was transferred exclusively for a purpose other than to qualify for medicaid, if the asset was used to acquire an annuity, only if:
- a. The owner of the annuity provides documentation satisfactory to the department that names the department as the remainder beneficiary in the first position for at least the total amount of medical assistance paid on behalf of the annuitant or the department is named in the second position after the community spouse or minor or disabled child, and that establishes that any attempt by such spouse or a representative of such child to dispose of any such remainder shall cause the department to become the remainder beneficiary for at least the total amount of medical assistance paid on behalf of the annuitant;
  - b. The annuity is purchased from an insurance company or other commercial company that sells annuities as part of the normal course of business;
  - c. The annuity is irrevocable and neither the annuity nor payments due under the annuity may be assigned or transferred;
  - d. The annuity provides substantially equal monthly payments of principal and interest that vary by five percent or less from the total annual payment of the previous year, and does not have a balloon or deferred payment of principal or interest;
  - e. The annuity will return the full principal and interest within the purchaser's life expectancy as determined in accordance with actuarial publications of the office of the chief actuary of the social security administration; and
  - f. All annuities owned by the purchaser produce total monthly gross income that:
    - (1) Does not exceed the minimum monthly maintenance needs allowance for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5; and
    - (2) When combined with the purchaser's other monthly income at the time the purchaser, the purchaser's spouse, the annuitant, or the annuitant's spouse applies for benefits under this chapter, does not exceed one hundred fifty percent of the minimum monthly maintenance needs



allowance allowed for a community spouse as determined by the department pursuant to 42 U.S.C. 1396r-5.

**History:** Effective April 1, 2008; amended effective January 1, 2010; January 1, 2011.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02; 42 USC 1396p(c)

**75-02-02.1-37. Unearned income.** Unearned income is income that is not earned income. Unearned income received in a fixed amount each month shall be applied in the month in which it is normally received.

1. Recurring unearned lump sum payments received after application for medicaid shall be prorated over the number of months the payment is intended to cover. When a payment is received and prorated in an ongoing case, or after a period of medicaid eligibility or eligibility for the children's health insurance program as provided in chapter 75-02-02.2, and the case is closed and then reopened during the prorated period, or within the following proration period, the lump sum payment proration must continue. All other recurring unearned lump sum payments received before application for medicaid or for the children's health insurance program as provided in chapter 75-02-02.2 are considered income in the month received and are not prorated.
2. All nonrecurring unearned lump sum payments, except health or long-term care insurance payments, veterans administration aid and attendance, veterans administration reimbursements for unusual medical expenses, and veterans administration homebound benefits intended for medical expenses shall be considered as income in the month received and assets thereafter.
3. ~~One-twelfth of the annual amount of lease payments, not otherwise required to be disregarded under section 75-02-02.1-38.2, deposited in individual Indian moneys accounts by the bureau of Indian affairs is income in each month and may be determined:~~
  - ~~a. By totaling all payments in the most recent full calendar year and dividing by twelve;~~
  - ~~b. By totaling all payments in the twelve-month period ending with the previous month and dividing by twelve; or~~
  - ~~c. If the applicant or recipient demonstrates, by furnishing lease documents or reports, that the deposit amount will be substantially different than the annual amount which would be determined under subdivision a or b, by totaling all payments likely to be made in the twelve-month period beginning with the month in which the lease arrangement changed and dividing by twelve.~~

4. One-twelfth of annual conservation reserve program payments, less expenses, such as seeding and spraying, necessary to maintain the conservation reserve program land in accordance with that program's requirements, is unearned income in each month.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 2003; June 1, 2004; August 1, 2005; January 1, 2011.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

**75-02-02.1-38.1. Post-eligibility treatment of income.** Except in determining eligibility for workers with disabilities or children with disabilities, this section prescribes specific financial requirements for determining the treatment of income and application of income to the cost of care for an individual screened as requiring nursing care services who resides in a nursing facility, the state hospital, ~~the Anne Carlsen facility an institution for mental disease, a psychiatric~~ residential treatment facility ~~accredited by the joint commission on accreditation of healthcare organizations,~~ or an intermediate care facility for the mentally retarded, or who receives swing-bed care in a hospital.

1. The following types of income may be disregarded in determining medicaid eligibility:
  - a. Occasional small gifts;
  - b. For so long as 38 U.S.C. 5503 remains effective, ninety dollars of veterans administration improved pensions paid to a veteran, or a surviving spouse of a veteran, who has neither spouse nor child, and who resides in a medicaid-approved nursing facility;
  - c. Payments to certain United States citizens of Japanese ancestry, resident Japanese aliens, and eligible Aleuts made under the Wartime Relocation of Civilians Reparations Act [50 U.S.C. App. 1989 et seq.];
  - d. Agent orange payments;
  - e. German reparation payments made to survivors of the holocaust, and reparation payments made under sections 500 through 506 of the Austrian General Social Insurance Act;
  - f. Netherlands reparation payments based on Nazi, but not Japanese, persecution during World War II [Pub. L. 103-286; 42 U.S.C. 1437a, note];
  - g. Radiation Exposure Compensation Act [Pub. L. 101-426; 42 U.S.C. 2210, note]; and
  - h. Interest or dividend income from liquid assets.



2. The mandatory payroll deductions under the Federal Insurance Contributions Act [26 U.S.C. 3101 et seq.] and medicare are allowed from earned income.
3. In establishing the application of income to the cost of care, the following deductions are allowed in the following order:
  - a. The nursing care income level;
  - b. Amounts provided to a spouse or family member for maintenance needs;
  - c. The cost of premiums for health insurance in the month the premium is paid or prorated and deducted from income in the months for which the premium affords coverage;
  - d. The cost of premiums for long-term care insurance carried by an individual or the individual's spouse in the month the premium is paid or prorated and deducted from income in the months for which the premium affords coverage;
  - e. Medical expenses for necessary medical or remedial care that are each:
    - (1) Documented in a manner which describes the service, the date of the service, the amount of cost incurred, and the name of the service provider;
    - (2) Incurred in the month for which eligibility is being determined, or was incurred in a prior month but was actually paid in the month for which eligibility is being determined and was not previously allowed as a deduction or offset of recipient liability, and was not applied previously to recipient liability;
    - (3) Provided by a medical practitioner licensed to furnish the care;
    - (4) Not subject to payment by any third party, including medicaid and medicare;
    - (5) Not incurred for nursing facility services, swing-bed services, or home and community-based services during a period of ineligibility because of a disqualifying transfer; and
    - (6) Claimed; and
  - f. The cost of services of an applicant's or recipient's guardian or conservator, up to a maximum equal to five percent of countable gross monthly income excluding nonrecurring lump sum payments.

4. For purposes of this section, "premiums for health insurance" include any payments made for insurance, health care plans, or nonprofit health service plan contracts which provide benefits for hospital, surgical, and medical care, but do not include payments made for coverage which is:
  - a. Limited to disability or income protection coverage;
  - b. Automobile medical payment coverage;
  - c. Supplemental to liability insurance;
  - d. Designed solely to provide payments on a per diem basis, daily indemnity, or nonexpense-incurred basis; or
  - e. Credit accident and health insurance.

**History:** Effective July 1, 2003; amended effective June 1, 2004; May 1, 2006; April 1, 2008; January 1, 2010; January 1, 2011.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02



**75-02-02.1-38.2. Disregarded income.**

1. This section applies to an individual residing in the individual's own home or in a specialized facility, workers with disabilities coverage, children with disabilities coverage, and to the medicare savings programs, but does not apply to an individual receiving nursing care services in a nursing facility, the state hospital, ~~the Anne Carlsen facility~~ an institution for mental disease, a psychiatric residential treatment facility accredited by the joint commission on accreditation of healthcare organizations, an intermediate care facility for the mentally retarded, or receiving swing-bed care in a hospital. The following types of income shall be disregarded in determining medicaid eligibility:
  - a. Money payments made by the department in connection with foster care, subsidized guardianship, or the subsidized adoption program;
  - b. Occasional small gifts;
  - c. County general assistance that may be issued on an intermittent basis to cover emergency-type situations;
  - d. Income received as a housing allowance by a program sponsored by the United States department of housing and urban development or rent supplements or utility payments provided through a housing assistance program;
  - e. Income of an individual living in the parental home if the individual is not included in the medicaid unit;
  - f. Educational loans, scholarships, grants, awards, workers compensation, vocational rehabilitation payments, and work study received by a student, or any fellowship or gift, or portion of a gift, used to pay the cost of tuition and fees at any educational institution;
  - g. In-kind income except in-kind income received in lieu of wages;
  - h. Per capita judgment funds paid to members of the Blackfeet Tribe and the Gross Ventre Tribe under Pub. L. 92-254, to any tribe to pay a judgment of the Indian claims commission or the court of claims under Pub. L. 93-134, or to the Turtle Mountain Band of Chippewa Indians, the Chippewa Cree Tribe of Rocky Boy's Reservation, the Minnesota Chippewa Tribe, or the Little Shell Tribe of Chippewa Indians of Montana under Pub. L. 97-403;
  - i. Compensation received by volunteers participating in the action program as stipulated in the Domestic Volunteer Service Act of 1973 [Pub. L. 93-113; 42 U.S.C. 4950 et seq.], including foster grandparents, older American community service program, retired

senior volunteer program, service corps of retired executives, volunteers in service to America, and university year for action;

- j. Benefits received through the low income home energy assistance program;
- k. Training funds received from vocational rehabilitation;
- l. Training allowances of up to thirty dollars per week provided through a tribal native employment works program, or the job opportunity and basic skills program;
- m. Income tax refunds and earned income credits;
- n. Needs-based payments, support services, and relocation expenses provided through programs established under the Workforce Investment Act [29 U.S.C. 2801 et seq.], and through the job opportunities and basic skills program;
- o. Income derived from submarginal lands, conveyed to Indian tribes and held in trust by the United States, as required by section 6 of Pub. L. 94-114 [~~42 U.S.C. 301~~, note 25 U.S.C. 459e];
- p. Income earned by a child who is a full-time student or a part-time student who is not employed one hundred hours or more per month;
- q. Payments from the family subsidy program;
- r. The first fifty dollars per month of current child support, received on behalf of children in the medicaid unit, from each budget unit that is budgeted with a separate income level;
- s. Payments made to recipients under title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 [Pub. L. 91-646, 42 U.S.C. 4621 et seq.];
- t. Payments made tax exempt as a result of section 21 of the Alaska Native Claims Settlement Act [Pub. L. 92-203];
- u. Payments to certain United States citizens of Japanese ancestry, resident Japanese aliens, and eligible Aleuts made under the Wartime Relocation of Civilians Reparations Act [Pub. L. 100-383; 50 U.S.C. App. 1989 et seq.];
- v. Agent orange payments;
- w. A loan from any source that is subject to a written agreement requiring repayment by the recipient;



- x. The medicare part B premium refunded by the social security administration;
- y. Payments from a fund established by a state as compensation for expenses incurred or losses suffered as a result of a crime;
- z. Temporary assistance for needy families benefit and support service payments;
- aa. Lump sum supplemental security income benefits in the month in which the benefit is received;
- bb. German reparation payments made to survivors of the holocaust and reparation payments made under sections 500 through 506 of the Austrian General Social Insurance Act;
- cc. Assistance received under the Disaster Relief and Emergency Assistance Act of 1974 [Pub. L. 93-288; 42 U.S.C. 5121 et seq.], or some other federal statute, because of a presidentially declared major disaster, and interest earned on that assistance;
- dd. Refugee cash assistance or grant payments;
- ee. Payments from the child and adult food program for meals and snacks to licensed families who provide day care in their home;
- ff. Extra checks consisting only of the third regular payroll check or unemployment benefit payment received in a month by an individual who is paid biweekly, and the fifth regular payroll check received in a month by an individual who is paid weekly;
- gg. All income, allowances, and bonuses received as a result of participation in the job corps program;
- hh. Payments received for the repair or replacement of lost, damaged, or stolen assets;
  - ii. Homestead tax credit;
  - jj. Training stipends provided to victims of domestic violence by private, charitable organizations for attending their educational programs;
- kk. Allowances paid to children of Vietnam veterans who are born with spina bifida, or to children of women Vietnam veterans who are born with certain covered birth defects, under 38 U.S.C. 1805 or 38 U.S.C. 1815;

- ll. Netherlands reparation payments based on Nazi, but not Japanese, persecution during World War II [Pub. L. 103-286; 42 U.S.C. 1437a, note];
- mm. Radiation Exposure Compensation Act [Pub. L. 101-426; 42 U.S.C. 2210, note];
- nn. ~~The first two thousand dollars per year of payments derived from individual interests in Indian trust or restricted lands;~~
- oo. Interest or dividend income from liquid assets;
- pp. ~~oo.~~ Additional pay received by military personnel as a result of deployment to a combat zone; and
- qq. ~~pp.~~ All wages paid by the census bureau for temporary employment related to census activities.

2. For purposes of this section:

- a. "Full-time student" means a person who attends school on a schedule equal to a full curriculum; and
- b. "Student" means an individual who regularly attends and makes satisfactory progress in elementary or secondary school, general equivalency diploma classes, home school program recognized or supervised by the student's state or local school district, college, university, or vocational training, including summer vacation periods if the individual intends to return to school in the fall.

**History:** Effective July 1, 2003; amended effective June 1, 2004; May 1, 2006; April 1, 2008; January 1, 2010; January 1, 2011.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

**75-02-02.1-39. Income deductions.** This section applies to an individual residing in the individual's own home or in a specialized facility, workers with disabilities coverage, children with disabilities coverage, and to the medicare savings programs, but does not apply to an individual receiving nursing care services in a nursing facility, the state hospital, ~~the Anne Carlsen facility an institution for mental disease, a psychiatric residential treatment facility accredited by the joint commission on accreditation of healthcare organizations,~~ an intermediate care facility for the mentally retarded, or receiving swing-bed care in a hospital. No deduction not described in subsections 1 through 14 may be allowed in determining medicaid eligibility.

- 1. Except in determining eligibility for the medicare savings programs, the cost of premiums for health insurance may be deducted from



income in the month the premium is paid or prorated and deducted from income in the months for which the premium affords coverage. In determining eligibility for the workers with disabilities coverage, the workers with disabilities enrollment fee and premiums are not deducted. In determining eligibility for the children with disabilities coverage, the children with disabilities premiums are not deducted. For purposes of this subsection, "premiums for health insurance" include payments made for insurance, health care plans, or nonprofit health service plan contracts which provide benefits for hospital, surgical, and medical care, but do not include payments made for coverage which is:

- a. Limited to disability or income protection coverage;
  - b. Automobile medical payment coverage;
  - c. Supplemental to liability insurance;
  - d. Designed solely to provide payments on a per diem basis, daily indemnity, or nonexpense-incurred basis; or
  - e. Credit accident and health insurance.
2. Except in determining eligibility for the medicare savings programs, medical expenses for necessary medical or remedial care may be deducted only if each is:
- a. Documented in a manner which describes the service, the date of the service, the amount of the cost incurred, and the name of the service provider;
  - b. Incurred by a member of a medicaid unit in the month for which eligibility is being determined, or was incurred in a prior month but was actually paid in the month for which eligibility is being determined and was not previously allowed as a deduction or offset of recipient liability, and was not previously applied to recipient liability;
  - c. Provided by a medical practitioner licensed to furnish the care;
  - d. Not subject to payment by any third party, including medicaid and medicare;
  - e. Not incurred for nursing facility services, swing-bed services, or home and community-based services during a period of ineligibility determined under section 75-02-02.1-33.1; and
  - f. Claimed.

3. Reasonable expenses such as food and veterinarian expenses necessary to maintain a service animal that is trained to detect seizures for a member of the medicaid unit.
4. Except for a support payment withheld from an extra check that is disregarded, nonvoluntary child and spousal support payments may be deducted if actually paid by a member of the medicaid unit.
5. The cost of premiums for long-term care insurance carried by an individual or the individual's spouse may be deducted from income in the month the premium is paid or prorated and deducted from income the months for which the premium affords coverage. No premium deduction may be made in determining eligibility for the medicare savings programs.
6. Reasonable child care expenses, not otherwise reimbursed, may be deducted to the extent necessary to permit a caretaker or a spouse to work or participate in training.
7. With respect to each individual in the medicaid unit who is employed or in training, but who is not aged, blind, or disabled, thirty dollars may be deducted as a work or training allowance, but only if the individual's income is counted in the eligibility determination.
8. Except in determining eligibility for the medicare savings programs, transportation expenses may be deducted if necessary to secure medical care provided for a member of the medicaid unit.
9. Except in determining eligibility for the medicare savings programs, the cost of remedial care for an individual residing in a specialized facility, limited to the difference between the recipient's cost of care at the facility and the regular medically needy income level, may be deducted.
10. A disregard of twenty dollars per month is deducted from any income, except income based on need, such as supplemental security income and need-based veterans' pensions. This deduction applies to all aged, blind, and disabled applicants or recipients, provided that:
  - a. When more than one aged, blind, or disabled person lives together, no more than a total of twenty dollars may be deducted;
  - b. When both earned and unearned income is available, this deduction must be made from unearned income; and
  - c. When only earned income is available, this deduction must be made before deduction of sixty-five dollars plus one-half of the remaining monthly gross income made under subdivision b of subsection 13.



11. Reasonable adult dependent car expenses for an incapacitated or disabled adult member of the medicaid unit may be deducted to the extent necessary to permit a caretaker or a spouse to work or participate in training.
12. The cost to purchase or rent a car safety seat for a child through age ten is allowed as a deduction if a seat is not otherwise reasonably available.
13. The deductions described in this subsection may be allowed only on earned income.
  - a. For all individuals except aged, blind, or disabled applicants or recipients, deduct:
    - (1) Mandatory payroll deductions and union dues withheld, or ninety dollars, whichever is greater;
    - (2) Mandatory retirement plan deductions;
    - (3) Union dues actually paid; and
    - (4) Expenses of a nondisabled blind person, reasonably attributable to earning income.
  - b. For all aged, blind, or disabled applicants or recipients, deduct sixty-five dollars plus one-half of the remaining monthly gross earned income, provided that, when more than one aged, blind, or disabled person lives together, no more than sixty-five dollars, plus one-half of the remaining combined earned income, may be deducted.
14. A deduction may be made for the cost of services of an applicant's or recipient's guardian or conservator, up to a maximum equal to five percent of countable gross monthly income excluding nonrecurring lump sum payments.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; April 1, 2008; January 1, 2010; January 1, 2011.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

#### **75-02-02.1-40. Income levels.**

1. Levels of income for maintenance shall be used as a basis for establishing financial eligibility for medicaid. The income levels applicable to individuals and units are:
  - a. Categorically needy income levels.

- (1) Family coverage income levels established in the medicaid state plan are applied to the family coverage group. The family size is increased for each unborn child when determining the appropriate family size.
- (2) Except for individuals subject to the nursing care income level, the income level for categorically needy aged, blind, or disabled recipients is that which establishes supplemental security income eligibility.

b. Medically needy income levels.

- (1) Medically needy income levels established in the medicaid state plan are applied when a medicaid individual or unit resides in the individual's or the unit's own home or in a specialized facility, and when a medicaid individual has been screened as requiring nursing care, but elects to receive home and community-based services. The family size is increased for each unborn child when determining the appropriate family size.
- (2) The nursing care income levels established in the medicaid state plan are applied to residents receiving care in a nursing facility, an intermediate care facility for the mentally retarded, the state hospital, ~~the Anne Carlsen facility~~ an institution for mental disease, a psychiatric residential treatment facility accredited by the joint commission on accreditation of healthcare organizations, or receiving swing-bed care in a hospital.
- (3) The community spouse income level for a medicaid eligible community spouse is subject to subdivision a, paragraph 1 of subdivision b, or subdivision c. The level for an ineligible community spouse is the greater of two thousand two hundred sixty-seven dollars per month or the minimum amount permitted under section 1924(d)(3)(c) of the Act [42 U.S.C. 1396r-5(d)(3)(C)], as adjusted pursuant to section 1924(g) of the Act [42 U.S.C. 1396r-5(g)].
- (4) The income level for each ineligible family member in a spousal impoverishment prevention case is equal to one-third of an amount determined in accordance with section 1924(d)(3)(A)(i) of the Act [42 U.S.C. 1396r-5(d)(3)(A)(i)], less the monthly income of that family member. For purposes of this paragraph, "family member" has the meaning given in subsection 1 of section 75-02-02.1-24.

c. Poverty income level.



- (1) The income level for pregnant women and children under age six is equal to one hundred and thirty-three percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.
- (2) Qualified medicare beneficiaries. The income level for qualified medicare beneficiaries is equal to one hundred percent of the poverty level applicable to the family of the size involved. The income level applies regardless of living arrangement.
- (3) The income level for children aged six to nineteen is equal to one hundred percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.
- (4) The income level for transitional medicaid benefits is equal to one hundred and eighty-five percent of the poverty level applicable to a family of the size involved. The family size is increased for each unborn child when determining the appropriate family size.
- (5) The income level for qualified working and disabled individuals is equal to two hundred percent of the poverty level applicable to the family of the size involved. The income level applies regardless of living arrangement.
- (6) The income level for specified low-income medicare beneficiaries is equal to one hundred twenty percent, of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.
- (7) The income level for qualified individuals is equal to one hundred thirty-five percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.
- (8) The income level for workers with disabilities is two hundred twenty-five percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.
- (9) The income level for children with disabilities is two hundred percent of the poverty level applicable to a family of the size involved. The income level applies regardless of living arrangement.

2. Determining the appropriate income level in special circumstances.
  - a. A child who is away at school is not treated as living independently, but shall be allowed the appropriate income level for one during all full calendar months. This is in addition to the income level applicable for the family unit remaining at home.
  - b. A child who is living outside of the parental home, but who is not living independently, or a spouse who is temporarily living outside of the home to attend training or college, to secure medical treatment, because of temporary work relocation required by an employer, or for other reasons beyond the control of the spouse, shall be allowed a separate income level during all full calendar months during which the child or spouse lives outside the home. No separate income level is otherwise available.
  - c. During a month in which an individual enters a specialized facility or leaves a specialized facility to return home, the individual shall be included in the family unit in the home for the purpose of determining the family size and the appropriate income level. An individual residing in a specialized facility shall be allowed the appropriate medically needy, workers with disabilities, or children with disabilities income level for one during all full calendar months in which the individual resides in the facility.
  - d. During a month in which an individual with eligible family members in the home enters or leaves a nursing facility to return home, or elects to receive home and community-based services or terminates that election, the individual shall be included in the family unit in the home for the purpose of determining the family size and the appropriate medically needy, workers with disabilities, or children with disabilities income level. An individual in a nursing facility shall be allowed fifty dollars to meet maintenance needs during all full calendar months in which the individual resides in the nursing facility. A recipient of home and community-based services shall be allowed the medically needy income level for one during all full calendar months in which the individual receives home and community-based services. In determining eligibility for workers with disabilities or children with disabilities coverage, individuals in a nursing facility, or in receipt of home and community-based services, will be allowed the appropriate workers with disabilities or children with disabilities income level for one during all full calendar months in which the individual resides in the facility.
  - e. For an institutionalized spouse with an ineligible community spouse, the fifty dollar income level is effective in the month of entry, during full calendar months, and in the month of discharge. The ineligible community spouse and any other family members



remaining in the home shall have the income levels described in paragraphs 3 and 4 of subdivision b of subsection 1.

- f. For a spouse electing to receive home and community based services, who has an ineligible community spouse, the medically needy income level for one is effective in the month the home and community-based services begin, during full calendar months, and in the month the home and community-based services are terminated. The ineligible community spouse and any other family members remaining in the home shall have the income levels described in paragraphs 3 and 4 of subdivision b of subsection 1.
- g. An individual with no spouse, disabled adult child, or child under age twenty-one at home who enters a nursing facility may receive the medically needy income level for one if a physician certifies that the individual is likely to return to the individual's home within six months. The six-month period begins with the first full calendar month the individual is in the nursing facility. If, at any time during the six-month period, the individual's status changes and the stay in the nursing facility is expected to exceed the six months, the individual may have only the nursing care income level beginning in the month following the month of the status change. An individual may receive the medically needy income level for only one six-month period per stay in a nursing facility. If an individual is discharged, then readmitted to a nursing facility, there must be a break of at least one full calendar month between the periods of institutionalization in order for the new stay to be considered a new period of institutionalization.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; April 1, 2008; January 1, 2010; January 1, 2011.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-02

**75-02-02.1-41. Deeming of income.** Excess income is the amount of net income remaining after allowing the appropriate disregards, deductions, and medicaid income level.

1. Twenty-five percent of the excess income of an ineligible medicaid unit shall be deemed available during any full calendar month an eligible member of the medicaid unit receives services in a specialized facility.
2. No income may be deemed to a supplemental security income recipient in a specialized facility or receiving home and community-based services as such a recipient's maintenance needs are met by the supplemental security income grant.

3. If subdivision a or b applies, the excess income of an individual in nursing care, an intermediate care facility for the mentally retarded, the state hospital, or the Anne Carlsen facility, receiving swing bed care in a hospital or receiving home and community-based services may be deemed to the individual's legal dependents to bring their income up to the appropriate medically needy income level.
  - a. The legal dependents who are also eligible for medicaid do not receive a temporary assistance for needy families payment or supplemental security income. In these circumstances, income may be deemed only to the extent it raises the legal dependents' income to the appropriate medically needy income level.
  - b. The legal dependents are ineligible for medicaid or choose not to be covered by medicaid. In these circumstances, income may be deemed only to the extent it raises the legal dependents' net income to the appropriate community spouse or family member income level.
    - (1) Income of the institutionalized or home and community-based spouse may be deemed to an ineligible community spouse only to the extent that income is made available to the community spouse.
    - (2) Excess income shall be deemed to family members in spousal impoverishment cases, up to the family members' income level.
4. The excess income of a spouse or parent may not be deemed to a recipient to meet medical expenses during any full calendar month in which the recipient receives nursing care services in a nursing facility, an intermediate care facility for the mentally retarded, the state hospital, ~~the Anne Carlsen facility~~ an institution for mental disease, or a psychiatric residential treatment facility ~~accredited by the joint commission on accreditation of healthcare organizations~~, receives swing-bed care in a hospital, or receives home and community-based services. Income of any eligible spouse or parent shall be deemed to an individual who is ineligible for supplemental security income, up to the appropriate income level.
5. For purposes of determining eligibility for workers with disabilities or children with disabilities coverage, income of a spouse or parent may be deemed to a nonsupplemental security income spouse or child, who is in the medicaid unit, but who is not residing with the applicant or recipient,



to bring their income up to the appropriate workers with disabilities or children with disabilities income level.

**History:** Effective December 1, 1991; amended effective December 1, 1991; July 1, 1993; July 1, 2003; June 1, 2004; April 1, 2008; January 1, 2011.

**General Authority:** NDCC 50-06-16, 50-24.1-04

**Law Implemented:** NDCC 50-24.1-01

## **CHAPTER 75-02-02.2**

### **75-02-02.2-01. Definitions.** For purposes of this chapter:

1. "American Indian or Alaska Native" means a member of a federally recognized Indian tribe, band, or group or a descendant in the first or second degree, of any such member; an Eskimo or Aleut or other Alaska native enrolled by the secretary of the interior pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]; a person who is considered by the secretary of the interior to be an Indian for any purpose; or a person who is determined to be an Indian under regulations promulgated by the secretary.
2. "Applicant" means an individual seeking benefits under the healthy steps program on behalf of a child.
3. "Asset" means any kind of property or property interest, whether real, personal, or mixed, whether liquid or illiquid, and whether or not presently vested with possessory rights.
4. "Children's health insurance program" means the North Dakota children's health insurance program, also known as the healthy steps program, which is a program implemented pursuant to North Dakota Century Code chapter 50-29 and 42 U.S.C. 1397aa et seq. to furnish health assistance to low-income children funded through title XXI of the Social Security Act [42 U.S.C. 1397aa et seq.].
5. "County agency" means the county social service board.
6. "Creditable health insurance coverage" means a health benefit plan which includes coverage for hospital or medical or major medical. The following are not considered credible health insurance coverage:
  - a. Coverage only for accident or disability income insurance;
  - b. Coverage issued as a supplement to automobile liability insurance;
  - c. Liability insurance, including general liability insurance and automobile liability insurance;
  - d. Workforce safety insurance or similar insurance;
  - e. Automobile medical payment insurance;
  - f. Credit-only insurance;
  - g. Coverage for onsite medical clinics;



- h. Other similar insurance coverage specified in federal regulations under which benefits for medical care are secondary or incidental to other insurance;
  - i. Coverage for dental or vision;
  - j. Coverage for long-term care, nursing home care, home health care, or community-based care;
  - k. Coverage only for specified disease or illness;
  - l. Hospital indemnity or other fixed indemnity insurance; and
  - m. Coverage provided through Indian health services.
7. "Department" means the North Dakota department of human services.
  8. "Disabled" has the same meaning as the term has when used by the social security administration in determining disability for title II or XVI of the Social Security Act [42 U.S.C. 301 et seq.].
  9. "Earned income" means income currently received as wages, salaries, commissions, or profits from activities in which an individual or household is engaged through either employment or self-employment. There must be an appreciable amount of personal involvement and effort, on the part of the individual or household, for income to be considered "earned".
  10. "Employer" means an individual or entity who employs the services of an applicant or a member of the applicant's household and who pays the individual wages, salaries, or benefits.
  11. "Full calendar month" means the period which begins at midnight on the last day of the previous month and ends at midnight on the last day of the month under consideration.
  12. "Household member" means any individual who shares the child's home a substantial amount of time. Children who are twenty-one years of age or older are not counted as household members. An individual who is temporarily absent from the household by reason of employment, school, training, or medical treatment, or who is expected to return to the household within thirty days of the date of the healthy steps program application, shall be considered a household member.
  13. "Institutionalized individual" means an individual who is an inpatient in a nursing facility, an intermediate care facility for the mentally retarded, the state hospital, a psychiatric residential treatment facility ~~accredited by the joint commission on accreditation of health care organizations,~~

~~the Anne Carlsen center for children, an institution for mental disease,~~  
or an individual who receives swing-bed care in a hospital.

14. "Insurance carrier" means the insurance company that underwrites the insurance coverage for the children's health insurance program.
15. "Living independently" means an individual under the age of twenty-one who:
  - a. Has served a tour of active duty with the armed services of the United States and lives separately and apart from either parent;
  - b. Has married even though that marriage may have ended through divorce or separation. A marriage ended by legal annulment is treated as if the marriage never occurred;
  - c. Has lived separately and apart from both parents for at least three consecutive full calendar months after the date the individual left the parental home, continues to live separately and apart from both parents, and has received no support or assistance from either parent while living separately and apart. Providing health insurance coverage or paying court-ordered child support payments for a child is not considered to be providing support or assistance. For purposes of this subdivision, periods when an individual is attending an educational or training facility, is receiving care in a specialized facility, or is an institutionalized person are deemed to be periods when the individual was living with a parent unless the individual previously established that the individual was living independently;
  - d. Has left foster care and established a living arrangement separate and apart from either parent and received no support or assistance from either parent. Providing health insurance coverage or paying court-ordered child support payments for a child is not considered to be providing support or assistance; or
  - e. Has lived separately and apart from both parents due to incest, continues to live separately and apart from both parents, and receives no support or assistance from either parent while living separately and apart. Providing health insurance coverage for a child is not considered to be providing support or assistance.
16. "Long-term care" means the services received by an institutionalized individual when the individual is screened or certified as requiring the services provided in a long-term care facility.
17. "Medicaid" means a program implemented pursuant to North Dakota Century Code chapter 50-24.1 and 42 U.S.C. 1396 et seq. to furnish medical assistance, as defined in 42 U.S.C. 1396d(a), to individuals



determined eligible for medically necessary covered medical and remedial services.

18. "Poverty line" means the official income poverty line as defined by the United States office of management and budget and revised annually in accordance with 42 U.S.C. 9902(2).
19. "Public institution" means an institution that is the responsibility of a governmental unit or over which a governmental unit exercises administrative control.
20. "Specialized facility" means a residential facility, including a basic care facility, a licensed family foster care home for children or adults, a licensed group foster care home for children or adults, a transitional living facility, a facility established to provide quarters to clients of a sheltered workshop, and any other facility determined by the department to be a provider of remedial services, but does not mean an acute care facility or a nursing facility.
21. "Student" means an individual who regularly attends and makes satisfactory progress in elementary or secondary school, general equivalency diploma classes, home school program recognized or supervised by the student's state or local school district, college, university, or vocational training, including summer vacation periods if the individual intends to return to school in the fall. A full-time student is a person who attends school on a schedule equal to a full curriculum.
22. "Supplemental security income" or "SSI" means a program administered under title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].
23. "Temporary assistance for needy families" means a program administered under North Dakota Century Code chapter 50-09 and title IV-A of the Social Security Act [42 U.S.C. 601 et seq.].
24. "The plan" means the North Dakota children's health insurance program.
25. "Title II" means title II of the Social Security Act [42 U.S.C. 401 et seq.].
26. "Title XVI" means title XVI of the Social Security Act [42 U.S.C. 1381 et seq.].

27. "Title XXI" means title XXI of the Social Security Act [42 U.S.C. 1397aa et seq.].

**History:** Effective October 1, 1999; amended effective August 1, 2005; January 1, 2011.

**General Authority:** NDCC 50-29

**Law Implemented:** NDCC 50-29-01; 42 USC 1397aa et seq.



## CHAPTER 75-03-07

**75-03-07-01. Purpose.** ~~The purpose of this chapter is to establish minimum standards of in-home care and to assure that those standards are maintained.~~  
Repealed effective October 1, 2010.

**History:** ~~Effective December 1, 1981.~~

**General Authority:** ~~NDCC 50-11.1-08~~

**Law Implemented:** ~~NDCC 50-11.1-04~~

**75-03-07-02. Objective of rules.** ~~Under the authority vested in the department pursuant to North Dakota Century Code section 50-11.1-08, the department is empowered to prescribe and promulgate such rules as are necessary to carry out the provisions of North Dakota Century Code chapter 50-11.1. Repealed effective October 1, 2010.~~

**History:** ~~Effective December 1, 1981; amended effective January 1, 1987.~~

**General Authority:** ~~NDCC 50-11.1-08~~

**Law Implemented:** ~~NDCC 50-11.1-08~~

**75-03-07-03. Definitions.** ~~Definitions The terms used in this chapter are as defined have the same meanings as in North Dakota Century Code chapter 50-11.1 section 50-11.1-02.~~

**History:** ~~Effective December 1, 1981; amended effective October 1, 2010.~~

**General Authority:** ~~NDCC 50-11.1-08~~

**Law Implemented:** ~~NDCC 50-11.1-02, 50-11.1-06, 50-11.1-08~~

### **75-03-07-04. In-home registration and standards.**

1. ~~An application for a registration document shall~~ must ~~be submitted to the county social service board~~ authorized agent ~~in the county wherein the applicant proposes to provide in-home services. Application shall~~ must ~~be made in the form and manner prescribed by the department.~~
2. ~~Applicants~~ An applicant ~~for an in-home registration document shall be directly responsible for the care, supervision, and guidance of the child or children in the child or children's home and shall comply with the following standards, certifying in the application that the applicants shall~~ applicant:
  - a. ~~Be~~ is ~~at least fourteen~~ eighteen ~~years of age.~~
  - b. ~~Be mentally;~~ is ~~physically, cognitively, socially, and emotionally able to provide adequate care for the children in the applicant's charge~~ healthy and will use mature judgment when making decisions impacting the quality of child care.

- c. ~~Be able to~~ Shall devote adequate time and attention to the children in the applicant's ~~charge care and provide an environment that is physically and socially adequate for children.~~
- d. ~~Participate~~ Shall participate in specialized training related to child care ~~as if~~ provided by or approved by the department.
- e. ~~Provide~~ Shall provide food of sufficient quantity and nutritious quality in accordance with the United States department of agriculture standards which satisfies the dietary needs of the children while in the applicant's ~~charge care.~~
- f. ~~Provide~~ Shall provide proper ~~health care, supervision, and protection~~ for children in the applicant's ~~charge care.~~ Supervision means the provider being within sight or hearing range of an infant, toddler, or preschooler at all times so the provider is capable of intervening to protect the health and safety of the child. For the school-age child, it means a provider being available for assistance and care so that the child's health and safety are protected.
- g. ~~Not~~ Shall provide for a safe and sanitary environment while children are in care.
- h. ~~May not use or be under the influence of any illegal drugs or alcoholic beverages except for medical purposes while children are in care.~~
- h. i. ~~Never~~ May not leave children without supervision.
- j. Shall ensure that discipline is constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, praising appropriate behavior, or gentle physical restraint, such as holding. A child may not be subjected to physical harm, fear, or humiliation. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury, or neglect or abuse, to any child is grounds for denial or revocation of an in-home registration.
  - (1) Authority to discipline may not be delegated to children nor may discipline be administered by children.
  - (2) Separation, when used as discipline, must be appropriate to the child's development and circumstances. The child must be in a safe, lighted, well-ventilated room within sight or hearing range of the in-home provider. An in-home provider may not isolate a child in a locked room or closet.
  - (3) A child may not be punished for lapses in toilet training.



- (4) An in-home provider may not use verbal abuse or make derogatory remarks about a child, or a child's family, race, or religion when addressing the child or in the presence of a child.
  - (5) An in-home provider may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
  - (6) An in-home provider may not force-feed a child or coerce a child to eat, unless medically prescribed and administered under a medical provider's care.
  - (7) An in-home provider may not use deprivation of meals or snacks as a form of discipline or punishment.
  - (8) An in-home provider may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child.
  - (9) An in-home provider may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in a child's mouth to deter the child from biting other children.
  - (10) An in-home provider may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.
- i. ~~k.~~ Discuss ~~Shall discuss~~ methods of discipline and child management with the parent or parents ~~and shall not engage in any method of punishment which humiliates or frightens a child or causes more than minor transient physical or emotional discomfort, or both.~~
  - j. ~~Provide care on a continuing basis for less than a twenty-four-hour period.~~
- 3. If the physical or mental, cognitive, social, or emotional health capabilities of an in-home applicant or provider appear to be questionable, the department may ~~request that~~ require the provider individual to present evidence of capability the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.
  - 4. In-home providers shall ensure safe care for the children receiving services in their care. ~~If there exists a probable cause determination a services-required decision made under North Dakota Century Code chapter 50-25.1 exists,~~ indicating that ~~any a~~ child has been abused or neglected by the applicant or in-home provider, ~~the person that decision has a direct bearing on the applicant's or in-home provider's~~

ability to serve the public in a capacity involving the provision of child care and the application or in-home registration may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that any child has been abused or neglected by the applicant or in-home provider, the applicant or in-home provider shall furnish information, satisfactory to the department, from which the department can determine the applicant's or in-home provider's current ability to provide care that is free of abuse or neglect. The department shall furnish the determination of current ability will be furnished to the operator applicant or in-home provider and to the regional director of the regional human service center or his the director's designee for consideration and action on the in-home registration document. Each applicant shall complete a department-approved authorization for background check form no later than the first day of employment.

**History:** Effective December 1, 1981; amended effective January 1, 1987; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-02, 50-11.1-06, 50-11.1-07, 50-11.1-08

**75-03-07-05. Minimum requirements for care of children with special needs.** An in-home provider shall make appropriate accommodations, as required by the Americans with Disabilities Act, to meet the needs of children with special needs. The in-home provider must receive documentation of the child's special needs by the parent upon the child's enrollment.

1. When a child with special needs is being cared for, the in-home provider shall consult with the child's parents, and, with the parent's permission, the child's source of professional health care, or, when appropriate, other health and professional consultants to gain an understanding of the child's individual needs. The in-home provider shall receive a written health care plan from the child's medical provider or parent with information related to the child's special needs, such as a description, definition of the diagnosis, and general information for emergency and required care such as usual medications and procedures.
2. In-home providers shall receive proper instructions as to the nature of the child's special needs and potential for growth and development.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-06, 50-11.1-08

**75-03-07-06. Denial or revocation of in-home registration.**



1. The right to provide early childhood services is dependent upon the applicant's or provider's continuing compliance with the terms of the registration as listed in section 75-03-07-04.
2. A fraudulent or untrue representation is grounds for revocation or denial.
3. a. The applicant or in-home provider may not have been found guilty of, pled guilty to, or pled no contest to:
  - (1) An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; or 12.1-27.2 sexual performances by children; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child;
  - (2) An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in paragraph 1; or
  - (3) An offense, other than an offense identified in paragraph 1 or 2, if the department determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
- b. The department has determined that the offenses enumerated in paragraphs 1 and 2 of subdivision a have a direct bearing on the applicant's or provider's ability to serve the public in a capacity as a provider.
- c. In the case of misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of

probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.

4. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct a statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-06, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

**75-03-07-07. Appeals.** An applicant for an in-home registration or in-home provider may appeal a decision to deny or revoke a registration document by filing a written appeal with the department. The appeal must be postmarked or received by the department within ten calendar days of the in-home registration or in-home provider's receipt of written notice of the decision to deny or revoke the registration document. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-06, 50-11.1-08, 50-11.1-10



## CHAPTER 75-03-07.1

**75-03-07.1-00. Definitions.** The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter:

1. "Attendance" means the total number of children present at any one time.
2. "Child with special needs" means a child whose medical providers have determined that the child has or is at risk for chronic physical, developmental, behavioral, or emotional conditions.
3. "Emergency designee" means an individual designated by a holder of a self-declaration to be a backup staff member for emergency assistance or to provide substitute care.
4. "Infant" means a child who is less than twelve months of age.
5. "Provider" means the holder of a self-declaration document.
6. "Supervision" means a provider or staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so that the provider or staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a provider or staff member responsible for caring for or teaching children being available for assistance and care so that the child's health and safety is protected.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02, 50-11.1-08, 50-11.1-17

~~**75-03-07.1-01. Fees.** A fee of fifteen dollars must accompany the affidavit for a standard compliance certification document. The fee will go to the county social service board for training and education of the county social service board for training and education of the county staff who administers the standard compliance certification program. Repealed effective October 1, 2010.~~

~~**History:** Effective June 1, 1995.~~

~~**General Authority:** NDCC 50-11.1-08, 42 CFR Part 98~~

~~**Law Implemented:** NDCC 50-11.1-08~~

**75-03-07.1-02. ~~Standard compliance certification~~ Self-declaration standards - Application.**

1. ~~An affidavit for a standard compliance certification document must be submitted~~ applicant for a self-declaration document shall submit the application to the county social service board authorized agent in

the county in which the applicant proposes to provide early childhood services. An affidavit application, including a department-approved authorization for background check for household members age twelve and older, an emergency designee, and an applicant, must be made in the form and manner prescribed by the department. The affidavit application must include the following sworn statement:

I am not required by North Dakota state law (Chapter 50-11.1) to be licensed to provide early childhood services.

- ~~a. A license is required if care is provided for six or more children or for four or more infants.~~
- ~~b. An "infant" means a child who is less than twenty-four months of age.~~

2. A provisional self-declaration document may be issued:

- a. The director of a regional human service center, or the director's designee, in consultation with the department, may issue a provisional self-declaration document although the applicant or self-declaration holder fails to, or is unable to, comply with all applicable standards and rules of the department.
- b. A provisional self-declaration document must:
  - (1) State that the self-declaration holder has failed to comply with all applicable standards and rules of the department;
  - (2) State the items of noncompliance;
  - (3) Expire at a set date, not to exceed six months from the date of issuance; and
  - (4) Be exchanged for an unrestricted self-declaration document, which bears an expiration date of one year from the date of issuance of the provisional self-declaration document, after the applicant or operator demonstrates compliance, satisfactory to the department, with all applicable standards and rules.
- c. The department may issue a provisional self-declaration document only to an applicant or provider who has waived, in writing:
  - (1) The right to a written statement of charges as to the reasons for the denial of an unrestricted self-declaration document; and



- (2) The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted self-declaration document, either at the time of application or during the period of operation under a provisional self-declaration document.
  - d. Any provisional self-declaration document issued must be accompanied by a written statement of violations signed by the director of the regional human service center or the director's designee and must be acknowledged in writing by the provider.
  - e. Subject to the exceptions contained in this section, a provisional self-declaration document entitles the holder to all rights and privileges afforded the holder of an unrestricted self-declaration document.
  - f. The provider shall display prominently the provisional self-declaration document and agreement.
  - g. The provider shall provide parents written notice that the provider is operating on a provisional self-declaration document and the basis for the provisional self-declaration document.
3. Applicants ~~An applicant for standard compliance certification a self-declaration document shall be directly responsible for the care, supervision, and guidance of the child or children and; shall comply with the following standards, certifying, and shall certify:~~
- a. That the applicant:
    - (1) Is at least eighteen years of age;
    - (2) ~~Is mentally, physically, and emotionally able to provide adequate care for the children in the applicant's charge~~ Shall provide an environment that is physically and socially adequate for the children; and that the applicant is an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;
    - (3) ~~Is able to~~ Shall devote adequate time and attention to the children in the applicant's ~~charge care~~;
    - (4) ~~Will~~ Shall provide food of sufficient quantity and nutritious quality in accordance with the United States department of agriculture standards which satisfies the dietary needs of the children while in the applicant's ~~charge care~~;

- (5) ~~Will~~ Shall provide proper health care and protection for children in the applicant's ~~charge~~ care;
- (6) ~~Will~~ May not use or be under the influence of, and will not allow any household member or staff member to use or be under the influence of any illegal drugs or alcoholic beverages except for medical purposes while caring for children are in care;
- (7) ~~Will~~ May not leave children without supervision;
- (8) ~~Will provide care on a continuing basis for less than a twenty-four-hour period;~~
- (9) ~~Will annually check the immunization records of the children in the applicant's care; and~~ Shall verify that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, or have on file a document stating that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs, unless the child is a drop-in or school-age child;
- (10) (9) ~~Will be certified in cardiopulmonary resuscitation and first aid. If the provider is not certified at the time of initial standard compliance certification, the provider shall be certified in cardiopulmonary resuscitation and first aid at the time of subsequent standard compliance certification renewal. Shall report immediately, as a mandated reporter, suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;~~
- (10) Shall provide a variety of games, toys, books, crafts, and other activities and materials to enhance the child's intellectual and social development and to broaden the child's life experience. Each provider shall have enough play materials and equipment so that at any one time each child in attendance may be involved individually or as a group;
- (11) Shall ensure a current health assessment or a health assessment statement completed by the parent is obtained at the time of initial enrollment of the child, which must indicate any special precautions for diet, medication, or activity. This assessment must be completed annually; and
- (12) Shall ensure a child information form completed by the parent is obtained at the time of initial enrollment of the child and annually thereafter.



- b. That discipline will be constructive or educational in nature and may include diversion, separation from the problem situation, ~~talk~~ talking with the child about the situation, ~~praise for~~ praising appropriate behavior, ~~and or~~ or gentle physical restraint such as holding. ~~Children~~ A child may not be subjected to physical harm or humiliation. Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury or neglect or abuse to any child is grounds for denial or revocation of a ~~standard compliance certification~~ self-declaration document.
- (1) ~~No~~ A child may not be kicked, punched, spanked, shaken, pinched, bitten, roughly handled, ~~or~~ struck, mechanically restrained, or physically maltreated by the ~~caretaker provider~~, staff member, household member, or any other adult in the facility residence.
  - (2) Authority to discipline may not be delegated to or be ~~accomplished~~ administered by children.
  - (3) Separation, when used as discipline, must be ~~brief~~ and appropriate to the child's age development and circumstances, and the child must be in a safe, lighted, well-ventilated room within sight or hearing range of an adult. ~~No~~ A child may not be isolated in a locked room or closet.
  - (4) ~~No~~ A child may not be ~~physically~~ punished for lapses in toilet training.
  - (5) ~~Verbal~~ A provider may not use verbal abuse or make derogatory remarks about the child, or the child's family, race, or religion, ~~or profane, threatening, unduly loud, or abusive language is not to be used~~ when addressing ~~children~~ a child or in the presence of ~~children~~ a child.
  - (6) A provider may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
  - (7) ~~No child~~ A provider may ~~be force-fed~~ not force-feed a child or coerce a child to eat unless medically prescribed and administered under a physician's medical provider's care.
  - (7) (8) ~~Deprivation~~ A provider may not use deprivation of snacks or meals ~~may not be used~~ as a form of discipline or punishment.
  - (9) A provider may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in a child's mouth to deter the child from biting other children.

- (10) A provider may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.
- c. That a working smoke detector ~~will be~~ is properly installed and in good working order on each floor used by children.
- d. That a fire extinguisher that is inspected annually ~~will be~~ is properly installed in locations, is in good working order, and is located in the area used for child care.
- e. That a working telephone ~~will be available~~ is located in the location used for child care. Emergency numbers for parents and first responders must be posted.
- f. ~~That the child care location have a means of transporting children who are in care at the facility.~~ When transportation is provided by a provider, children must be protected by adequate supervision and safety precautions.
- (1) Drivers must be eighteen years of age or older and must comply with all relevant federal, state, and local laws, including child restraint laws.
- (2) A child must not be left unattended in a vehicle.
- 4. Potential hazards, such as guns, household cleaning chemicals, uninsulated wires, medicines, noncovered electrical outlets, poisonous plants, and open stairways must not be accessible to children. Guns and ammunition must be kept in separate locked storage, or trigger locks must be used. Other weapons and dangerous sporting equipment, such as bows and arrows, must not be accessible to children.
- 3- 5. If the physical ~~or mental~~, cognitive, social, or emotional health capabilities of a an applicant or provider appear to be questionable, the department may request require that the provider individual present evidence of capability to provide the required care based on a formal evaluation. The department is not responsible for costs of any required evaluation.
- 4- 6. A ~~standard compliance certification~~ self-declaration document is only effective for one year.

**History:** Effective June 1, 1995; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08, 42 CFR Part 98

**Law Implemented:** NDCC ~~50-11.1-06~~ 50-11.1-07, 50-11.1-08, 50-11.1-16, 50-11.1-17



**75-03-07.1-03. Smoke-free environment.** ~~Smoking is not permitted at any time in an early childhood care facility while a child receives care. Repealed effective October 1, 2010.~~

**History:** Effective June 1, 1995.

**General Authority:** NDCC 23-12-10, 50-11.1-02.2; 42 CFR Part 98

**Law Implemented:** NDCC 50-11.1-02.2

**75-03-07.1-04. ~~Standard compliance certification~~ Self-declaration restricted to one per household or address residence - Nontransferability of early childhood services standard compliance certification self-declaration and emergency designee.**

1. ~~Only The department may not authorize more than one standard compliance certification self-declaration per address shall be authorized by the department. Only one person residing in or representing an address will be allowed to self-certify as a provider of early child care services at any one time residence. A residence means real property that is typically used as a single family dwelling. This applies to new self-declarations issued on or after October 1, 2010. Existing providers will be exempt from this provision until October 1, 2015, after which time all providers will be subject to the requirements of this subsection.~~
2. ~~The applicant shall identify one emergency designee for the self-declaration at the time of the application.~~
3. ~~The standard compliance certification provider shall be on the premises at all times while children are present supervising the children at all times when children are present, except in situations during which the emergency designee is providing care.~~
- 3- 4. ~~The standard compliance certification granted to a provider is nontransferable self-declaration is nontransferable to another residence.~~

**History:** Effective June 1, 1995; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08; 42 CFR Part 98

**Law Implemented:** NDCC 50-11.1-04 50-11.1-16, 50-11.1-17

**75-03-07.1-05. Appeals.** ~~Applicants~~ An applicant for, or a holder of, a standard compliance certification or holders of a standard compliance certification have self-declaration document has the right to appeal a decision to deny or revoke a standard compliance certification self-declaration document. The A written appeal must be filed in writing with postmarked or received by the department within ten calendar days of the applicant's or holder's receipt of written notice of such a the decision to deny or revoke the document. Upon receipt of a

timely appeal, an administrative hearing ~~shall~~ must be conducted in the manner prescribed by chapter 75-01-03.

**History:** Effective June 1, 1995; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08; 42 CFR Part 98

**Law Implemented:** NDCC ~~50-11.1-09~~; 50-11.1-10

**75-03-07.1-06. Revocation Denial or revocation of standard compliance certification self-declaration document.**

1. The right to provide early childhood services is dependent upon the applicant's or provider's continuing compliance with the terms of the application affidavit as listed in section 75-03-07.1-02.
2. A fraudulent application or untrue representation is grounds for revocation or denial.
3. a. The applicant, ~~standard compliance certification self-declaration provider, or members of the emergency designee, staff members, and household shall members may not have been found guilty or of, pled guilty of offenses which, in the view of the department, directly impact the ability of the registrant to serve the public as a child care provider. Conviction may be grounds for denial or revocation of the standard compliance certification. The applicant for standard compliance certification shall not have been found guilty of or pled guilty to an offense contained in North Dakota Century Code chapters 12.1-11, perjury - falsification - breach of duty; 12.1-12, bribery - unlawful influence of public servants; 12.1-16, homicide; 12.1-17, assaults - threats - coercion; 12.1-18, kidnapping; 12.1-20, sex offenses; 12.1-21, damaging property or public services; 12.1-22, robbery - breaking and entering offenses; 12.1-23, theft and related offenses; 12.1-24, forgery and counterfeiting; 12.1-27.1, obscenity control; 12.1-27.2, sexual performances by children; 12.1-28, gambling and related offenses; 12.1-28, prostitution; and 12.1-31, disorderly conduct - usury - tobacco to minors: to, or pled no contest to:~~
  - (1) An offense described in North Dakota Century Code chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; 12.1-18, kidnapping; or 12.1-27.2, sexual performances by children; or in North Dakota Century Code section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; 12.1-29-01, promoting prostitution; 12.1-29-02,



facilitating prostitution; 12.1-31-05, child procurement; or 14-09-22, abuse or neglect of a child;

(2) An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the offenses identified in paragraph 1; or

(3) An offense, other than an offense identified in paragraph 1 or 2, if the department determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

b. The department has determined that the offenses enumerated in paragraphs 1 and 2 of subdivision a have a direct bearing on the applicant's, provider's, emergency designee's, or staff member's ability to serve the public in a capacity as a provider, emergency designee, or staff member.

c. In the case of misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.

4. ~~The applicant shall be issued a standard compliance certification, even if the applicant has pled or been found guilty of an offense under subsection 2, if the applicant has been determined by the department to be sufficiently rehabilitated.~~ If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

5. ~~Standard compliance certification providers~~ A provider shall ensure safe care for the children receiving services in ~~their facility~~ the provider's residence. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists indicating that a child has been abused or neglected by an applicant, provider, emergency



designee, staff member, or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision of child care, and the application or self-declaration document may be denied or revoked. If there exists a probable cause services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that any child has been abused or neglected by the standard compliance certification applicant, provider, emergency designee, staff member, or members of the household member, the person applicant or provider shall furnish information to the department, from which the department can determine the applicant's, provider's current, or staff member's ability to provide care that is free of abuse or neglect. The department shall furnish the determination of ability to the operator applicant or provider and to the regional director of the regional human service center or his the director's designee for consideration and action on the standard compliance certification document application or self-declaration document. Appeal of departmental determinations are under chapters 75-01-03 and 75-03-18. Each applicant, provider, emergency designee, and staff member shall complete a department-approved authorization for background check form no later than the first day of employment. Household members over the age of twelve must complete a department-approved authorization for background check form at the time of application or upon obtaining residence at the location of the child care.

**History:** Effective June 1, 1995; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08, 50-11.1-09; 42 CFR Part 98

**Law Implemented:** NDCC 50-11.1-06.2, 50-11.1-08, 50-11.1-09, 50-11.1-16, 50-11.1-17

#### **75-03-07.1-07. Minimum sanitation requirements.**

1. The provider shall operate according to the recommendations by the federal centers for disease control and prevention, including washing hands, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and individually designated cloth towels or paper towels must be available at each sink. Clean towels must be provided at least daily.
2. The provider shall ensure that the residence, grounds, and equipment are located, cleaned, and maintained to protect the health and safety of children. The provider shall establish routine cleaning procedures to protect the health of the children.
3. Pets and animals.
  - a. The provider shall ensure that only cats, dogs, and small pets that are contained in an aquarium or other approved enclosed



container are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children.

- b. The provider shall ensure that animals are maintained in good health and are appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
- c. The provider shall ensure parents are aware of the presence of pets and animals in the family child care.
- d. The provider shall notify parents immediately if a child is bitten or scratched and skin is broken.
- e. The provider shall ensure that all contact between pets and children is closely supervised. The provider shall immediately remove the pet if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
- f. The provider shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The provider shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
- g. The provider shall ensure that indoor and outdoor areas accessible to children must be free of animal excrement.
- h. The provider shall ensure that the child care is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-08, 50-11.1-16, 50-11.1-17

#### **75-03-07.1-08. Infant care.**

##### **1. Environment and interactions.**

- a. A provider serving children from birth to twelve months shall provide an environment which protects the children from physical harm.
- b. The provider shall ensure that each infant receives positive stimulation and verbal interaction such as being held, rocked, talked with, or sung to.

- c. The provider shall respond promptly to comfort an infant's or toddler's physical and emotional distress:
  - (1) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and
  - (2) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.
- d. The provider shall ensure that infants have frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, and uncluttered area.
- e. The provider shall take children outdoors or to other areas within the child care for a part of each day to provide some change of physical surroundings and to be with other children.
- f. When a child is awake, the provider may not confine the child to a crib, portable crib, or other equipment for longer than twenty minutes, taking into consideration the child's emotional state.
- g. The provider shall ensure that infants are not shaken or jostled.
- h. The provider shall ensure that low chairs and tables or high chairs with trays must be provided for mealtime for infants no longer being held for feeding. High chairs, if used, must have a wide base and a safety strap.
- i. The provider shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.

## **2. Feeding.**

- a. The provider shall ensure that infants are provided developmentally appropriate nutritious foods. Only breast milk or iron-fortified infant formula may be fed to infants less than six months of age, unless otherwise instructed in writing by the infant's parent or medical provider.
- b. The provider shall ensure that infants are fed only the specific brand of iron-fortified infant formula requested by the parent. The provider shall use brand-specific mixing instructions unless alternative mixing instructions are directed by a child's medical provider.



- c. The provider shall ensure that mixed formula that has been unrefrigerated more than one hour is discarded.
- d. The provider shall ensure that frozen breast milk is thawed under cool running tap water or in the refrigerator in amounts needed. Unused, thawed breast milk must be discarded or given to the parent at the end of each day.
- e. The provider shall ensure that an infant is not fed by propping a bottle.
- f. The provider shall ensure that cereal and other nonliquids or suspensions are only fed to an infant through a bottle on the written orders of the child's medical provider.
- g. The provider shall be within sight and hearing range of an infant during the infant's feeding or eating process.

**3. Diapering.**

- a. The provider shall ensure that there is a designated cleanable diapering station, located separately from food preparation and serving areas in the child care if children requiring diapering are in care.
- b. The provider shall ensure that diapers are changed promptly when soiled or wet and in a sanitary manner.
- c. Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.
- d. The provider shall ensure that soiled or wet diapers are stored in a sanitary, covered container separate from other garbage and waste until removed from the child care.

**4. Sleeping.**

- a. The provider shall ensure that infants are placed on their back when sleeping to lower the risk of sudden infant death syndrome, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise. The infant's face must remain uncovered when sleeping.
- b. The provider shall ensure that infants sleep in a crib with a firm mattress or in a portable crib with the manufacturer's pad that meets consumer product safety commission standards.

- c. The provider shall ensure that if an infant falls asleep while not in a crib or portable crib, the infant must be moved immediately to a crib or portable crib.
- d. Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.
- e. The provider shall ensure that all items are removed from the crib or portable crib, except for one infant blanket and security item that does not pose a risk of suffocation to the infant.
- f. The provider shall ensure that mattresses and sheets are tightly fitted. The provider shall ensure that sheets and mattress pads are changed whenever they become soiled or wet, when cribs are used by different infants, or at least weekly.
- g. The provider shall ensure that each infant has an individual infant blanket.
- h. The provider shall ensure that toys or objects hung over an infant crib or portable crib must be held securely and be of size and weight that would not injure an infant if the toy or object accidentally falls or if the infant pulls on the object.
- i. The provider shall check on sleeping infants every fifteen minutes or have a monitor in the room with sleeping infants.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-08, 50-11.1-16, 50-11.1-17

**75-03-07.1-09. Minimum requirements for the care of children with special needs.** A provider shall make appropriate provisions, as required by the Americans with Disabilities Act, to meet the needs of children with special needs. The provider shall receive documentation of the child's special needs by the parent upon the child's enrollment.

1. When a child with special needs is admitted, the provider shall consult with the child's parents, and with the parent's permission, the child's source of professional health care or, when appropriate, other health and professional consultants, to gain an understanding of the child's individual needs. The provider shall receive a written health care plan from the child's medical provider or parent with information related to the child's special needs, such as a description, definition of the diagnosis, and general information for emergency and required care such as usual medications and procedures.
2. The provider shall ensure that staff members responsible for caring for or teaching children and the emergency designee receive proper



instructions as to the nature of the child's disability and potential for growth and development.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-08, 50-11.1-16, 50-11.1-17

**75-03-07.1-10. Correction of violations.**

1. A provider shall correct violations noted in a correction order within the following times:
  - a. For a violation of paragraphs 5 and 7 of subdivision a of subsection 3 of section 75-03-07.1-02, subdivision b of subsection 3 of section 75-03-07.1-02, and subsection 4 of section 75-03-07.1-02, within twenty-four hours.
  - b. For all other deficiencies of chapter 75-03-07.1, within twenty days.
2. All periods of correction begin on the date of the receipt of the correction order by the provider.
3. The regional supervisor of early childhood services may grant an extension of additional time to correct violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the provider and a showing that the need for the extension is created by unforeseeable circumstances and the provider has diligently pursued the correction of the violation.
4. The provider shall furnish a written notice to the authorized agent upon completion of the required corrective action. The correction order remains in effect until the authorized agent confirms the corrections have been made.
5. The provider shall notify the parent of each child receiving care at the residence and each staff member of the process for reporting a complaint or suspected rule violation.
6. Within three business days of the receipt of the correction order, the provider shall notify the parents of each child receiving care by this provider that a correction order has been issued. In addition to providing notice to the parent of each child, the provider also must post the correction order in a conspicuous location within the residence until the violation has been corrected or five days, whichever is longer.
7. A provider who has been issued a correction order must be reinspected at the end of the period allowed for correction. If, upon reinspection, it is determined that the provider has not corrected a violation identified in the correction order, a notice of noncompliance with the correction order

must be mailed by certified mail to the provider. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-07, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-08

**75-03-07.1-11. Fiscal sanctions.**

1. The department shall assess a fiscal sanction of twenty-five dollars per day for each violation of subdivisions b, c, d, and e of subsection 3 of section 75-03-07.1-02 or subsection 4 of section 75-03-07.1-02 for each day that the provider has not verified correction, after the allowable time for correction of violations ends.
2. The department shall assess fiscal sanction of five dollars per day for each violation of any other provision of this chapter for each day that the provider has not verified correction, after the allowable time for correction of violations ends.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-07.4, 50-11.1-07.5, 50-11.1-08



## CHAPTER 75-03-08

**75-03-08-01. Purpose.** ~~The purpose of this chapter is to establish minimum standards of family child care and to assure that those standards are maintained. Repealed effective October 1, 2010.~~

**History:** ~~Effective December 1, 1981; amended effective January 1, 1999.~~

**General Authority:** ~~NDCC 50-11.1-08~~

**Law Implemented:** ~~NDCC 50-11.1-01~~

**75-03-08-02. Authority and objective.** ~~Pursuant to North Dakota Century Code section 50-11.1-08, the department may prescribe and promulgate such rules as are necessary to carry out the provisions of North Dakota Century Code chapter 50-11.1. Repealed effective October 1, 2010.~~

**History:** ~~Effective December 1, 1981; amended effective January 1, 1987; January 1, 1999.~~

**General Authority:** ~~NDCC 50-11.1-08~~

**Law Implemented:** ~~NDCC 50-11.1-08~~

**75-03-08-03. Definitions.** ~~As The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:~~

- ~~1. "Attendance" means the total number of children present at any one time at the home family child care.~~
- ~~2. "Garegiver" means any individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in a child care home under the guidance and supervision of the family child care provider.~~
- ~~3. "County agency" means the county social service board in the county where the family child care home is located.~~
- ~~4. "Department" means the department of human services. "Child with special needs" means a child determined by a medical provider to have or to be at risk for chronic physical, developmental, behavioral, or emotional conditions.~~
- ~~5. 3. "Emergency designee" means an individual designated by the family child care provider to be a backup caregiver staff member for emergency assistance or to provide substitute care.~~
- ~~6. "Family child care home" means an occupied private residence in which early childhood services are provided for no more than seven children at any one time, except that the term includes a residence providing early childhood services to two additional school-aged children during the two hours immediately before and after the school day and all day,~~

~~except Saturday and Sunday, when school is not in session during the official school year.~~

4. "Infant" means a child who is younger than twelve months of age.
5. "Medication" is defined as any drug or remedy which is taken internally or orally, inhaled, or applied topically.
- ~~7.~~ 6. "Family child care provider" means the individual who has the legal responsibility and the administrative authority for the operation "Provider" means owner or operator of a family child care home. The family child care provider is the applicant for license or the licensee under this chapter.
8. ~~"Provider" means the family child care provider.~~
9. ~~"Staff member" means provider, substitute staff, volunteer, caregiver, or any other individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in the family child care home.~~
- ~~10.~~ 7. "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month and are not regularly scheduled for work.
- ~~11.~~ 8. "Volunteer" means an individual who visits or provides an unpaid service or visit, including a fire person firefighter for fire safety week, McGruff, or Santa Claus person a practicum student, or a foster grandparent.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02

#### **75-03-08-04. Effect of licensing and display of license.**

1. The issuance of a license to operate a family child care home is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.
2. The current license must be displayed prominently in the premises to which it applies.

**History:** Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-03, 50-11.1-04, ~~50-11.1-06~~



#### **75-03-08-05. Denial or revocation of license.**

1. A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-06.2, 50-11.1-09, and 50-11.1-10.
2. If an action to revoke a license is appealed, the ~~licenseholder~~ provider may continue the operation of the ~~facility~~ family child care pending the final administrative determination or until the license expires, whichever occurs first; ~~provided, however, that this, unless continued operation would jeopardize the health and safety of the children attending the family child care.~~ This subsection does not limit the actions the department may take pursuant to North Dakota Century Code ~~section~~ sections 50-11.1-07.8 and 50-11.1-12.
3. The department may revoke a license to operate a family child care ~~home~~ without first issuing a correction order, or simultaneously with a suspension if continued operation would jeopardize the health and safety of the children present or would violate North Dakota Century Code section 50-11.1-09.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09, 50-11.1-10

**75-03-08-05.1. Family child care home license.** The right to operate a licensed family child care ~~home~~ is dependent upon continuing compliance with the applicable provisions of North Dakota Century Code chapter 50-11.1 and the applicable standards contained in this chapter.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07

#### **75-03-08-06. Provisional license.**

1. The director of a regional human service center, ~~in the director's discretion,~~ or the director's designee, in consultation with the department, may issue a provisional license for the operation of a ~~newly opened family child care home or for a previously licensed family child care home~~ although the ~~family child care home~~ applicant or provider fails to, or is unable to, comply with all applicable standards and rules of the department.
2. A provisional license must:

- a. ~~Prominently state~~ State that the ~~family child care home provider~~ has failed to comply with all applicable standards and rules of the department;
  - b. ~~State that the items of noncompliance are set forth on a document available, upon request to the family child care provider;~~
  - c. Expire at a set date, not to exceed six months from the date of issuance; and
  - d. Be exchanged for an unrestricted license, which bears an expiration date of one year from the ~~same~~ date of issuance as the provisional license, ~~upon demonstrating after the applicant or provider demonstrates~~ compliance, satisfactory to the department, with all applicable standards and rules.
3. ~~A~~ The department may issue a provisional license ~~may be issued~~ only to an applicant or provider who has waived, in writing:
    - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
    - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
  4. Any provisional license issued must be accompanied by a written statement of violations signed by the ~~regional~~ director of the regional human service center or the regional director's designee and must be acknowledged in writing by the provider.
  5. Subject to the exceptions contained in this section, a provisional license entitles the holder to all rights and privileges afforded to the holder of an unrestricted license.
  6. The department ~~shall~~ may not issue a provisional license if the ~~facility~~ family child care is not in compliance with section 75-03-08-14.
  7. The provider shall prominently display the provisional license and agreement.
  8. The provider shall provide parents written notice that the ~~facility~~ family child care is operating on a provisional license and the basis for the provisional license.

**History:** Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; January 1, 1989; July 1, 1996; July 1, 1996, amendments voided by the



Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC ~~55-11.1-03, 55-11.1-04~~ 50-11.1-03, 50-11.1-04, 50-11.1-08

**75-03-08-06.1. Restricted license.** The department may issue a restricted license:

1. To restrict an individual's presence when children are in child care;
2. To restrict a pet or animal from areas accessible to children; or
3. When necessary to inform the parents that the provider is licensed, but is restricted to operating in certain rooms or floors of the residence or restricted from using specified outdoor space of the residence.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04

**75-03-08-07. Application for and nontransferability of family child care home license.**

1. An application for a license must be submitted to the ~~county agency~~ authorized agent in the county in which the ~~facility~~ family child care is located. Application must be made in the form and manner prescribed by the department.
2. The license is nontransferable and valid only ~~on~~ for the premises indicated on the license. A new application for a license must be filed ~~by a licensed home~~ upon change of provider or location.
3. The department may not issue more than one child care license per residence. A residence means real property that is typically used as a single family dwelling. This applies to licenses issued on or after October 1, 2010. Existing operators will be exempt from this provision until October 1, 2015, after which time all operators will be subject to the requirements of this subsection.

**History:** Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

**75-03-08-08.1. Provider responsibilities Duties of the provider.**

1. ~~Except as provided in subsections 2 and 3, a~~ A provider shall maintain, whenever services are provided, at least one staff member who:
  - a. Is certified in basic cardiopulmonary resuscitation that meets the requirements of the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department; and
  - b. Is certified or trained in a department-approved program to provide first aid.
2. Substitute staff are exempted from the requirements of subsection 1. If a provider utilizes a substitute or emergency designee who is not certified in cardiopulmonary resuscitation or first aid when no other staff member who is certified is on duty, the provider shall notify the parents of the date and time that the substitute or emergency designee will be caring for the children.
3. ~~A provider who uses an emergency designee and has no staff member present who is trained or certified to provide first aid and cardiopulmonary resuscitation may not be found in violation of subsection 1.~~
4. The provider shall have an adult staff member responsible for caring for or teaching children present in the ~~home~~ family child care at all times to supervise staff members under the age of eighteen and children in care.
5. ~~4.~~ A staff member may not at any time place ~~children~~ a child in an environment that would be harmful or dangerous to ~~their~~ the child's physical, cognitive, social, or emotional health.
6. ~~5.~~ The provider shall report ~~within twenty-four hours to the county director or the county director's designee~~ a to the authorized agent within twenty-four hours:
  - a. A death or serious accident or illness requiring hospitalization of a child while in the care of the facility family child care or attributable to care received in the ~~facility~~: family child care;
  - b. An injury to any child which occurs while the child is in the care of the family child care and which requires medical treatment;
  - c. Poisonings or errors in the administration of medication;
  - d. Closures or relocations of child care programs due to emergencies; and



- e. Fire that occurs or explosions that occur in or on the premises of the family child care.
- 7- 6. The provider shall develop and ensure compliance with a written policy and follow a procedure for accountability when a normally unaccompanied child fails to arrive for the program.
- 7. The provider shall be present in the family child care no less than sixty percent of the time when children are in care.
- 8. The provider, as a mandatory reporter, shall report any suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03.
- 9. The provider shall select an emergency designee.
- 10. The provider shall maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the family child care.
- 11. The provider must be an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care.
- 12. The provider shall ensure safe care for the children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so that the staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible for caring for or teaching children being available for assistance and care so the child's health and safety is protected.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08, ~~50-11.1-09~~

**75-03-08-09. Staffing requirements.** Staffing requirements are established by the number of children physically in care at the family child care home at a any given time, rather than total enrollment.

- 1. A provider may provide care to no more than a total of four children if all are under age twenty-four months.
- 2. A provider providing care to five or more children may provide care to no more than three children under age twenty-four months.
- 3. If a child in care has a disabling condition which requires more than usual care with special needs is admitted to the program, the child's

developmental age level must be used in determining the number of children for which care may be provided.

4. Children using the ~~licensed facility~~ family child care for a McGruff safe house, a block house, or a certified safe house program during an emergency are not counted under this section.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02.1, 50-11.1-04, 50-11.1-08, 50-11.1-09

**75-03-08-10. Minimum qualifications of ~~family child care~~ providers.** A provider shall:

1. Be at least eighteen years of age;
2. Complete a department-approved basic child care course during the first three months of licensure; and
3. Certify attendance at completion of a minimum of nine hours of county-approved department-approved training related to child care every licensing year and the nine hours of training in the first year following initial licensure must include a department-approved six-hour basic child care course;
- 3- ~~Be physically present in the home no less than sixty percent of the time when children are in care;~~
4. ~~Report any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1;~~
5. ~~Select an emergency designee for the home as backup for emergency assistance;~~
6. ~~Ensure safe care for the children under supervision; and~~
7. ~~Be mentally, physically, and emotionally able to provide adequate care for the children in the provider's charge.~~

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08, 50-11.1-09

**75-03-08-12. Minimum qualifications for all caregivers staff members responsible for caring for or teaching children.** Each staff member who provides care shall:

1. Be at least fourteen years of age, provided that each such individual staff member under age sixteen provides written parental consent for such



employment as a staff member, and the employment arrangements comply with North Dakota Century Code chapter 34-07. A member of the immediate family of the ~~family child care~~ provider may provide care if ~~such the~~ family member is at least twelve years of age;

2. ~~Be mentally, physically, and emotionally able to provide adequate care for the children under supervision; and~~ an individual of good physical, cognitive, social, and emotional health and use mature judgment when making decisions impacting the quality of child care;
3. ~~Ensure safe care for the children under supervision. Complete a department-approved basic child care course during the first three months of employment; and~~
4. Receive orientation related to child care policies, emergency procedures, special needs of children in care, and child care activities during the first week of employment.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08, ~~50-11.1-09~~

**75-03-08-12.1. Minimum qualifications of volunteers.** If a volunteer is providing child care, the volunteer shall meet the qualifications of a staff member responsible for caring for or teaching children and shall receive orientation for all assigned tasks.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-08-13. Provider and caregiver Minimum health requirements for all applicants, providers, and staff members responsible for caring for or teaching children.**

1. ~~Each provider or caregiver shall complete a health self-certification form certifying that the provider or caregiver does not have health problems that would interfere with the person's functioning as a caregiver or that would be detrimental to the health of the children or other staff. If the provider adds or replaces a caregiver after the licensure process is complete, the provider must submit a self-certification form completed by the new caregiver to the county within five working days of the caregiver's first workday.~~
2. ~~Each provider or caregiver shall furnish documentation of a negative mantoux tuberculosis test prior to initial licensure or employment, and every two years thereafter. If the provider adds or replaces a caregiver after the licensure process is complete, the caregiver shall furnish documentation of a negative mantoux tuberculosis test before~~

~~the first day of employment. Substitute staff are exempted from this requirement. A family child care provider who uses an untested emergency designee may not be found in violation of this provision.~~

- 3- ~~If the physical, cognitive, social, or mental emotional health capabilities of a an applicant, provider, or caregiver staff member appears questionable, the department may require the individual to be evaluated by appropriate professionals, with the results provided to the department present evidence of the individual's capability to provide the required care based on a formal evaluation. The department is not responsible for the costs of any required evaluation.~~
4. 2. ~~While children are in care, a provider or caregiver shall~~ A staff member or household member may not use or be under the influence of any alcohol or judgment-altering drugs illegal drugs or alcoholic beverages while caring for children.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08, 50-11.1-09

#### **75-03-08-14. Physical facilities Minimum requirements of the facility.**

1. The family child care home ~~shall provide~~ must contain adequate space, indoors and out, for the daily activities of the children. ~~This Adequate space~~ must include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space children are not permitted to occupy.
2. The ~~home~~ family child care must be clean and maintained to protect the health and safety of children. The ~~home~~ family child care and outdoor play area must be free of clutter, accumulation of refuse, standing water, unprotected wells, debris, and other health and safety hazards. ~~Rubbish and garbage~~ Garbage must be regularly removed.
3. ~~There must be~~ The provider shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children.
4. The ~~home must be~~ provider shall ensure that the family child care is equipped with one working properly installed smoke detector located in each sleeping area used by the children, and one working properly installed smoke detector and one fire extinguisher per level. Properly



installed means installed according to manufacturer's or fire inspector's directions.

5. ~~Elevated~~ The provider shall ensure that elevated areas, including stairs or porches, must have railings and safety gates where necessary to prevent falls.
6. ~~The home must have~~ provider shall ensure that the family child care has a drinking water supply from an approved community water system or from a source tested and approved by the state department of health.
7. ~~Each~~ The provider shall ensure that each child shall have has a comfortable and clean place to sleep or rest and an individual blanket. The provider may allow a child to sleep or rest on the floor may be used only when the floor is carpeted or padded, warm, and free from drafts. A provider caring for a child who is in care between the hours of eight p.m. and six a.m. shall have ensure that the child has an individual sleeping place. Any child under twelve months of age or unable to walk unassisted must be provided sleeping space in a crib with a firm mattress, or a playpen with adequate padding. A staff member may not place a child on a waterbed unless the child has attained both a developmental and chronological age of thirty-six months.
8. ~~Exterior~~ The provider shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas must be are contained, or fenced, or have natural barriers, to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
9. ~~Potential~~ The provider shall ensure that potential hazards, including such as guns, household cleaning chemicals, uninsulated wires, medicines, noncovered electrical outlets, and poisonous plants, and open stairways, may are not be accessible to young children. Guns must be kept The provider shall keep guns and ammunition in locked storage, each separate from ammunition the other, or shall use trigger locks must be used. Ammunition must be kept in locked storage separate from all firearms. The provider shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
10. ~~Indoor~~ The provider shall ensure indoor and outdoor equipment, toys, and supplies must be are safe, strong, nontoxic, and in good repair. All The provider shall ensure that all toys must be easily cleanable and must be cleaned and sanitized on a routine basis and equipment are kept clean and sanitary. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.

11. ~~Exit~~ The provider shall ensure that exit doorways and pathways ~~may~~ are not be blocked.
12. ~~The home must have~~ provider shall ensure that the family child care has a working telephone in the location used for child care. The provider shall post emergency numbers of parents and first responders.
13. ~~The home~~ family child care must have an indoor bathroom with a minimum of one ~~lavatory~~ sink and one flush toilet.
14. ~~The home~~ family child care must have hot and cold running water. ~~Hot water heaters must be turned down or there must be a tempering valve or an antiscalding device on~~ The water in the faucets used by children so that the temperature of hot water supplied to lavatories does must not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].
15. The family child care must meet the local minimum fire and safety standards. If the fire, safety, health, or sanitation environment of the ~~home~~ family child care appears questionable, the department or ~~county agency~~ authorized agent may require the provider to obtain an appropriate inspection from the appropriate fire authority or state department of health, and to submit the results of the inspection to the ~~county licensing agency~~ authorized agent. ~~Fire~~ The provider shall obtain fire and safety inspections must be obtained for all initially licensed prior to licensure if the family child care homes is located in a manufactured homes home, a mobile homes home, an apartment buildings building, homes a home in which care is provided to children in basements the basement, or homes a home having alternate heating devices, such as wood burning stoves, propane heaters, or fireplaces. Any inspection fees are the family child care home provider's responsibility. Any The provider shall ensure that any problems found must be are corrected.
16. ~~Steps~~ The provider shall ensure that steps and walkways must be are kept free from accumulations of water, ice, snow, or debris.
17. ~~Combustible~~ The provider shall ensure that combustible materials must be are kept away from light bulbs and other heat sources.
18. ~~Soiled or wet diapers must be stored in a sanitary, airtight container until laundered or removed from the home.~~

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02.2 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08, 50-11.1-09

#### **75-03-08-15. Minimum standards for provision of transportation.**



1. ~~Within ninety days of the date of initial licensure or relicensure~~ Prior to licensure, the provider shall establish a written policy governing the transportation of children to and from the family child care home, if the family child care home provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the family child care home. If the family child care home provides transportation, the provider shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.
2. When transportation is provided by a family child care home, children must be protected by adequate staff supervision and safety precautions.
  - a. Staffing requirements must be ~~met~~ maintained to assure the safety of children while being transported.
  - b. A child may not be left unattended in a vehicle.
3. Children must be instructed in safe transportation conduct appropriate to their age and stage of development.
4. The driver shall be eighteen years of age or older and shall comply with all relevant federal, state, and local laws, including child restraint system laws.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-08-16. ~~[Reserved]~~ Minimum emergency evacuation and disaster plan.**

1. Each provider shall establish and post an emergency disaster plan for the safety of the children in care. Written disaster plans must be developed in cooperation with local emergency management agencies. The plan must include:
  - a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;
  - b. What will be done if parents are unable to pick up their child as a result of the emergency; and
  - c. What will be done if the family child care has to be relocated or must close as a result of the emergency.

2. Fire and emergency evacuation drills must be performed monthly.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

#### **75-03-08-19. Admission procedures.**

1. The provider shall request a preadmission visit with the child and the child's parents to acquaint the child and the parent with the ~~home~~ family child care and its surroundings, the other children, and the ~~family-child care~~ provider.
2. The provider shall inform parents about the child care program, places and times of special activities outside the ~~home~~ family child care, policies, and emergency procedures, and shall discuss information concerning the child to identify and accommodate the child's needs. An explanation of how accidents and illnesses may be dealt with must be provided, as well as methods of discipline and developmentally appropriate techniques to be used.
3. ~~Parents must be notified~~ The provider shall notify parents of the payment rates and the time of payment.
4. The provider shall provide parents with unlimited access and opportunities to observe their children at any time their children are in care. This does not prohibit a ~~family-child care home~~ provider from locking its ~~the~~ doors of the family child care while children are in care.
5. ~~A health assessment statement completed by the parent must be obtained at the time of initial enrollment of the child and annually thereafter. This statement must indicate any special precautions for diet, medication, or activity. This statement must serve as evidence that a child is physically able to take part in the child care program.~~ The provider shall verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the provider considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
6. The provider shall inform parents that they may request daily reports for their child, including details regarding eating, napping, and diapering.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-08, 50-11.1-09

#### **75-03-08-20. Program requirements.**



1. The ~~family child care~~ provider shall have a program of daily individual and small group activities appropriate to the ages and needs of the children in the family child care home. The program must include activities that foster sound social, intellectual cognitive, emotional, and physical growth, developed ~~with discussion and in~~ consultation with parents as to their children's needs. A written daily routine, including mealtimes, rest times, planned developmentally appropriate activities, free play, and outside time shall be available to parents. The daily routine must be flexible enough to allow for spontaneous activity as appropriate.
2. The program must be designed with intervals of stimulation and relaxation and a balance between periods of active play and quiet play or rest. The daily routine must foster the development of good health habits and self-discipline, adequate indoor and outdoor play, rest, and sleep, with sufficient time and opportunities for various experiences.
3. The program must provide a variety of educational experiences for all ages of children served with an adequate supply of safe play equipment, toys, and materials for indoor and outdoor activity. Each family child care home shall have enough play materials and equipment so ~~that at any one time~~; each child in attendance may be ~~individually~~ involved individually or as a group.
4. Areas used for napping must provide an opportunity for undisturbed rest. ~~Napping~~ The provider shall set napping schedules must be set for children according to the children's ages, and needs, ~~and the parent's wishes.~~

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08, ~~50-11.1-09~~

**75-03-08-21. Nutrition Minimum standards for food and nutrition.**

~~Children must be served~~ A provider shall serve children nutritious meals or snacks according to the following requirements:

1. ~~Children in care for more than three hours shall receive either a snack or meal, whichever is appropriate to that time of day.~~ When the provider is responsible for providing food to children, the food supplied must meet United States department of agriculture standards and must be properly prepared, sufficient in amount, nutritious, varied according to the diets of the children enrolled, and served at appropriate hours in a sanitary manner.
2. When parents bring sack lunches for their children, the provider shall supplement lunches, as necessary, to provide nutritious and sufficient amounts of food for children, and shall provide adequate and appropriate refrigeration and storage as required.

3. When a child is in care for more than three hours, that child shall receive either a snack or a meal, whichever is appropriate to that time of day.
4. Children in care during any normal mealtime hour must be served nutritious food appropriate to that time of day.
3. 5. Children in care after school ~~who have not had any food since lunch~~ shall be provided with a snack.
  4. ~~a. Infants must be provided age-appropriate nutritious foods. Only breast milk or iron-fortified artificial milk, meeting the requirements of the Infant Formula Act of 1980 [Pub. L. 96-359; 94 Stat. 1190; 21 U.S.C. note et seq.], may be fed to infants less than six months of age, unless otherwise instructed by the infant's parent.~~
  - ~~b. Infants must be fed only the specific brand of artificial baby milk requested by the parent. Staff members shall use brand-specific mixing instructions unless alternative mixing instructions, based upon directions of a child's physician, are provided.~~
  - ~~c. Mixed formula, in single bottles or batches, that has been unrefrigerated more than one hour, must be discarded.~~
  - ~~d. Frozen breast milk must be thawed under cool running tap water, in amounts needed. Unused, thawed breast milk must be discarded at the end of each day.~~
  5. ~~a. An infant may not be fed by propping a bottle.~~
  - ~~b. Cereal and other nonliquids or suspensions may only be fed to an infant through a bottle on the written orders of the child's physician.~~
  - ~~c. Staff members may not leave an infant unattended during the infant's feeding or eating process.~~
6. Information provided by the children's parents regarding special diets, allergies, or other dietary conditions shall be adhered to in the feeding schedule and planning of menus.
7. The provider shall serve snacks and meals to children in a manner commensurate with their development, using appropriate foods, portions, dishes, and eating utensils.
8. The provider or staff member may encourage children to eat the food served, but the provider or staff member may not coerce or force-feed children.



9. The provider shall post a daily or weekly menu for meals and snacks.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08, 50-11.1-09

**75-03-08-21.1. ~~Health protection~~ Minimum sanitation and safety requirements.**

1. Children shall have received all immunizations appropriate for the child's age, as prescribed by the state department of health, unless the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs.
2. ~~At least one staff member shall meet the current basic cardiopulmonary resuscitation certification requirements of the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department.~~
3. ~~Caregivers~~ Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, ~~after nosewiping,~~ after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and sanitary hand-drying equipment, individually designated cloth towels, or paper towels must be available at each lavatory sink. ~~Glean towels must be provided daily.~~
4. ~~3.~~ The ~~family child care~~ provider shall have a statement on file, signed by the child's parents, authorizing emergency medical care for each child.
5. ~~4.~~ ~~Sufficient~~ The provider shall ensure at least one department-approved first-aid supplies must be available for minor emergencies kit is maintained and kept in a designated location, inaccessible to children, yet readily accessible to staff members at all times.
6. ~~5.~~ The ~~family child care~~ provider shall have plans to respond to illness and emergencies, including evacuation in case of fire, serious injury, and ingestion of poison.
7. ~~The family child care provider shall designate at least one individual who may be called upon for child care assistance in emergencies.~~
8. ~~The family child care provider shall develop plans to respond to minor illnesses when children may be cared for in the provider's home.~~
9. ~~6.~~ If children in care require medication, the ~~caregiver~~ provider shall secure written permission and follow proper instructions as to the administration of medication. ~~Medications must be stored~~

- a. The provider shall store medications in an area inaccessible to children.
  - b. Medications stored in a refrigerator must be stored collectively in a spillproof spill proof container. A
  - c. The provider shall keep a written record of the administration of medication, including over-the-counter medication, to for each child must be kept. For purposes of this paragraph, "medication" is defined as any drug or remedy which is taken or applied internally, orally, or topically. Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. Completed medication records must be included in the child's record.
- 10- 7. Children The provider shall establish practices in accordance with guidance obtained through consultation with local or state health department authorities regarding the exclusion and return of children with infectious or communicable conditions shall be excluded from the family child care home until the condition may no longer be transmitted and guidance regarding exclusion and return to the family child care home is obtained through consultation with local or state health department authorities. Such. The provider may obtain this guidance may be obtained directly or through current published materials regarding exclusion and return to the family child care home.
- 11- 8. The family child care provider may release a child only to the child's parent, guardian, individual in loco parentis, or individual who provides a written authorization has been authorized by the child's parent, guardian, or individual in loco parentis.
- 12- 9. A staff member may not permit a child to play outdoors without clothing appropriate to the climatic conditions. The provider shall ensure that children playing outdoors are clothed appropriately for weather conditions.
- 13- 10. A staff member may not bathe a child, permit a child to use a wading pool, or permit a child to play outdoors, without adequate supervision. The provider shall ensure that a staff member responsible for caring for or teaching children is supervising directly any child who is bathing or using a pool.
11. The provider shall ensure that children receive proper supervision when playing outdoors.
- 14- 12. Children's personal items, including combs, brushes, pacifiers, and toothbrushes, must be individually identified and stored in a sanitary manner.



- ~~15. There must be a designated cleanable diapering area in the home if children requiring diapering are in care. Diapers must be changed promptly when needed and in a sanitary manner. Infants must be changed on a cleanable surface area which must be thoroughly cleaned with detergent and sanitized after each diapering. The provider may apply to the department for permission to use cloth diapers. The department, in its discretion, may grant permission upon a satisfactory showing of adequate sanitary controls.~~
16. 13. All pets present in the family child care home must be properly immunized. Nondomestic animals, such as skunks, opossum, or raccoon, whether or not regarded as pets, may not be present in the family child care home. Pets may not be allowed in the kitchen or eating area during meal preparation or meals. Pets and animals.
- a. The provider shall ensure that only cats, dogs, and small pets that are contained in an aquarium or other approved enclosed container are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children.
  - b. The provider shall ensure that animals are maintained in good health and are appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
  - c. The provider shall ensure parents are aware of the presence of pets and animals in the family child care.
  - d. The provider shall notify parents immediately if a child is bitten or scratched and skin is broken.
  - e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall immediately remove the pet if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
  - f. The provider shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The provider shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
  - g. The provider shall ensure that indoor and outdoor areas accessible to children must be free of animal excrement.

- h. The provider shall ensure that the child care is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
47. ~~14.~~ Wading Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the facility ~~must be strictly supervised~~ family child care and ~~must be emptied and cleaned~~ shall empty, clean, and sanitize wading pools daily.
48. ~~15.~~ All swimming pools used by the children must be approved annually by the local health unit.
49. ~~16.~~ ~~Smoking is not permitted in any family child care home at any time during which a child who receives early childhood services from that family child care home is present and receiving services.~~ The provider shall ensure that garbage stored outside is kept away from areas used by children and is kept in covered containers. Open burning is not permitted. The provider shall keep indoor garbage in containers with lids. The provider may allow paper waste to be kept in open waste containers.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC ~~50-11.1-02.2~~ 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08, ~~50-11.1-09~~

#### **75-03-08-22. Records.**

1. A copy of this chapter must be kept on the premises and available to staff members at all times.
2. The ~~family child care~~ provider shall maintain the following records:
  - a. The child's full name, ~~birth date~~ birth date, current home address, legal names of the child's parents ~~or legal guardian~~, and the business and home personal telephone numbers where ~~those individuals may they can~~ be reached;
  - b. A written statement from the parents or legal guardian authorizing emergency medical care;
  - c. Names and telephone numbers of individuals authorized to take the child from the family child care ~~home~~;
  - d. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, or have on file a document citing that the child is medically exempt or exempt from immunizations based



on religious, philosophical, or moral beliefs, unless the child is a drop-in or school-aged school-age child; and

- e. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child, that must indicate any special precautions for diet, medication, or activity, ~~must serve as evidence that a child is physically able to take part in the child care program, and must.~~ This assessment shall be completed annually.
3. ~~All~~ The provider shall ensure that all records, photographs, and information maintained with respect to children receiving child care services ~~must be~~ are kept confidential, and ~~that access must be~~ is limited to staff members, the parents, ~~or legal guardian~~ of each child, and to the following, unless otherwise protected by law:
- a. Authorized ~~county agency agent~~ and department representatives;
  - b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
  - c. Individuals who possess written authorization from the child's parent ~~or legal guardian~~. The family child care home shall have a release of information form available and shall have the form signed prior to the release of information.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-08-23. Discipline - Punishment prohibited.** Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury, or neglect or abuse, to any child is grounds for denial or revocation of a provider's license.

- 1. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, ~~praise for~~ praising appropriate behavior, ~~and or~~ gentle physical restraint, such as holding. ~~Children~~ A child may not be subjected to physical harm, fear, or humiliation.
- 2. Authority to discipline may not be delegated to or be ~~accomplished~~ administered by children.
- 3. Separation, when used as discipline, must be ~~brief and~~ appropriate to the child's age development and circumstances. ~~Any~~ The child must be in a safe, lighted, well-ventilated room within sight or hearing range of

~~an adult~~ a staff member responsible for caring for or teaching children.  
A child may not be isolated in a locked room or closet.

4. A child may not be ~~physically~~ punished for lapses in toilet training.
5. ~~When addressing a child, or while in the presence of a child, staff members~~ A staff member may not use verbal abuse or make derogatory remarks about the child, the child's family, race, or religion ~~nor when addressing a child or when in the presence of a child.~~ A staff member may not use profane, threatening, unduly loud, or otherwise abusive language in the presence of a child.
6. ~~A child may not be force-fed~~ A staff member may not force-feed a child or coerce a child to eat, unless medically prescribed and administered under a physician's medical provider's care.
7. ~~Deprivation~~ A staff member may not use deprivation of snacks or meals may not be used as a form of discipline or punishment.
8. A staff member, household member, or any other adult in the family child care may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child ~~may not be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by any staff member or any other adult in the facility.~~
9. A staff member may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in the mouth of a child to deter the child from biting other children.
10. A staff member may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-08-24. ~~[Reserved]~~ Specialized types of care and minimum requirements.**

**1. Infant care.**

**a. Environment and interactions.**

- (1) A provider serving children from birth to twelve months shall provide an environment which protects the children from physical harm.
- (2) The provider shall ensure that each infant receives positive stimulation and verbal interaction with a staff member



responsible for caring for or teaching children, such as being held, rocked, talked with, or sung to.

- (3) The staff members responsible for caring for or teaching children or emergency designee shall respond promptly to comfort an infant's or toddler's physical and emotional distress:
  - (a) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and
  - (b) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.
- (4) The provider shall ensure that infants have frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, and uncluttered area.
- (5) Staff members responsible for caring for or teaching children must take children outdoors or to other areas within the family child care for a part of each day to provide some change of physical surroundings and to be with other children.
- (6) When a child is awake, staff members may not confine the child to a crib, portable crib, or other equipment for longer than twenty minutes, taking into consideration the child's emotional state.
- (7) The provider shall ensure that infants are not shaken or jostled.
- (8) The provider shall ensure that low chairs and tables or high chairs with trays must be provided for mealtime for infants no longer being held for feeding. High chairs, if used, must have a wide base and a safety strap.
- (9) The provider shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.

**b. Feeding.**

- (1) The provider shall ensure that infants are provided developmentally appropriate nutritious foods. Only breast milk or iron-fortified infant formula may be fed to infants less

than six months of age, unless otherwise instructed in writing by the infant's parent or medical provider.

- (2) The provider shall ensure that infants are fed only the specific brand of iron-fortified infant formula requested by the parent. Staff members shall use brand-specific mixing instructions unless alternative mixing instructions are directed by a child's medical provider.
- (3) The provider shall ensure that mixed formula that has been unrefrigerated more than one hour is discarded.
- (4) The provider shall ensure that frozen breast milk is thawed under cool running tap water, or in the refrigerator in amounts needed. Unused, thawed breast milk must be discarded or given to the parent at the end of each day.
- (5) The provider shall ensure that an infant is not fed by propping a bottle.
- (6) The provider shall ensure that cereal and other nonliquids or suspensions are only fed to an infant through a bottle on the written orders of the child's medical provider.
- (7) The provider shall ensure that a staff member responsible for caring for or teaching children is within sight and hearing range of an infant during the infant's feeding or eating process.

c. Diapering.

- (1) The provider shall ensure that there is a designated cleanable diapering station, located separately from food preparation and serving areas in the family child care, if children requiring diapering are in care.
- (2) The provider shall ensure that diapers are changed promptly when soiled or wet and in a sanitary manner.
- (3) Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.
- (4) The provider shall ensure that soiled or wet diapers are stored in a sanitary, covered container separate from other garbage and waste until removed from the family child care.

d. Sleeping.



- (1) The provider shall ensure that infants are placed on their back when sleeping to lower the risk of sudden infant death syndrome, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise. The infant's face must remain uncovered when sleeping.
- (2) The provider shall ensure that infants sleep in a crib with a firm mattress or in a portable crib with the manufacturer's pad that meets consumer product safety commission standards.
- (3) The provider shall ensure that if an infant falls asleep while not in a crib or portable crib, the infant must be moved immediately to a crib or portable crib.
- (4) Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.
- (5) The provider shall ensure that all items are removed from the crib or portable crib, except for one infant blanket and security item that do not pose a risk of suffocation to the infant.
- (6) The provider shall ensure that mattresses and sheets are tightly fitted. The provider shall ensure that sheets and mattress pads are changed whenever they become soiled or wet, when cribs are used by different infants, or at least weekly.
- (7) The provider shall ensure that each infant has an individual infant blanket.
- (8) The provider shall ensure that toys or objects hung over an infant crib or portable crib must be held securely and be of size and weight that would not injure an infant if the toy or object accidentally falls or if the infant pulls on the object.
- (9) The provider shall check on sleeping infants every fifteen minutes or have a monitor in the room with the sleeping infant.

## **2. Night care.**

- a. Any family child care offering night care shall provide program modifications for the needs of children and their parents during the night.
- b. In consultation with parents, special attention must be given by the staff member responsible for caring for or teaching children to provide a transition into this type of care, appropriate to the child's needs.

- c. The provider shall encourage parents to leave their children in care or pick them up before and after their normal sleeping period when practical, to ensure minimal disturbance of the child during sleep, with consideration given to the parents' work schedule.
- d. The provider shall ensure that children under the age of six are supervised directly when bathing.
- e. The provider shall ensure that comfortable beds, cots, or cribs, complete with a mattress or pad, are available and the provider shall ensure:
  - (1) Pillows and mattresses have clean coverings.
  - (2) Sheets and pillowcases are changed as often as necessary for cleanliness and hygiene, at least weekly.
  - (3) If beds are used by different children, sheets and pillowcases are laundered before use by other children.
  - (4) Each bed or cot has sufficient blankets available.
- f. The provider shall require each child in night care to have night clothing and a toothbrush marked for identification.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-08-25. ~~{Reserved}~~ Minimum requirements for care of children with special needs.** A provider shall make appropriate accommodations, as required by the Americans with Disabilities Act, to meet the needs of children with special needs. The provider shall receive documentation of the child's special needs by the parent upon the child's enrollment.

1. When children with special needs are being cared for, the provider shall consult with the child's parents, and with the parent's permission, the child's source of professional health care or, when appropriate, other health and professional consultants to gain an understanding of the child's individual needs. The provider shall receive a written health care plan from the child's medical provider or parent with information related to the child's special needs, such as a description of the special needs, definition of the diagnosis, and general information for emergency and required care such as usual medications and procedures.



2. The provider shall ensure staff members responsible for caring for or teaching children receive proper instructions as to the nature of the child's special needs and potential for growth and development.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-08-27. Effect of conviction on licensure and employment.**

1. ~~A family child care home~~ An applicant or provider may not be, and a family child care home may not employ or allow, in any capacity that involves or permits contact between the employee emergency designee, staff member, or household member and any child cared for by the family child care home, an individual a provider, emergency designee, staff member, or household member who has been found guilty of, pled guilty to, or pled no contest to:
  - a. ~~An offense described in North Dakota Century Code chapters chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; or 12.1-18, kidnapping; or 12.1-27.2, sexual performances by children; or in North Dakota Century Code sections section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or an 14-09-22, abuse or neglect of a child; or~~
  - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes offenses identified in subdivision a; or
  - ~~b. c.~~ c. An offense, other than an offense identified in subdivision a or b, if the department in the case of a family child care an applicant, provider, or household member, or the family child care provider in the case of an employee a staff member or emergency designee, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.

2. ~~Within ninety days of the date of initial licensure or relicensure, a family child care home~~ The department has determined that the offenses enumerated in subdivision a or b of subsection 1 have a direct bearing on the applicant's, provider's, emergency designee's, or staff member's ability to serve the public in a capacity as a provider, emergency designee, or staff member.
3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
4. The provider shall establish written policies and engage in practices that conform to those policies to effectively implement this section before the hiring of any staff members.
3. ~~For the purposes of subdivision b of subsection 1, the department in the case of a family child care provider, or the family child care provider in the case of an employee, shall treat completion of a period of five years after final discharge from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.~~
4. ~~The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing upon an individual's ability to serve the public as the owner or proprietor of a family child care home.~~
5. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

**75-03-08-28. Child abuse and neglect determinations decisions.** ~~If a probable cause determination or a decision that services are required~~ A provider



shall ensure safe care for the children receiving services in the provider's family child care. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that any a child has been abused or neglected by a an applicant, provider, emergency designee, staff member, that individual or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision of child care, and the application or license may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists, indicating that any child has been abused or neglected by the applicant, provider, emergency designee, staff member, or household member, the applicant or provider shall furnish information satisfactory to the department, from which the department may can determine the applicant's, provider's, or staff member's current ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability must be furnished to the family child care applicant or provider and to the regional director of the human service center or the regional director's designee for consideration and action on the family child care home application or license. Each applicant, provider, emergency designee, and staff member in the family child care shall complete a department-approved authorization for background check form no later than the first day of employment. Household members over the age of twelve must complete a department-approved authorization for background check form at the time of application, relicensure, or upon obtaining residence at the location of the family child care.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08; 50-11.1-09

**75-03-08-29. ~~Allowable time periods for correction~~ Correction of deficiencies violations.**

1. ~~Deficiencies~~ A provider shall correct violations noted in a correction order must be corrected within the following times:
  - a. For a violation of section 75-03-08-09, subsections 2 ~~and~~ 7, ~~and~~ 10 of section 75-03-08-14, or section 75-03-08-23, within twenty-four hours.
  - b. For a ~~deficiency~~ violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-08-14, within sixty days.
  - c. For a ~~deficiency~~ violation that requires substantial building remodeling, construction, or change, within sixty days.
  - d. For all other ~~deficiencies~~ violations, within twenty days.

2. All periods for correction begin on the date of receipt of the correction order by the licensee provider.
3. The regional supervisor of early childhood program licensing services may grant an extension of additional time to correct deficiencies violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the licensee provider and a showing that the need for the extension is created by unforeseeable circumstances and the licensee provider has diligently pursued the correction of the deficiency violation.
4. The provider shall furnish a written notice ~~of to the authorized agent upon completion of the correction order action to the county agency required corrective action~~. The correction order ~~is effective~~ remains in effect until the ~~county agency receives the notice~~ authorized agent confirms the corrections have been made.
5. Within three business days of the receipt of the correction order, the provider shall notify the parents of each child receiving care at the family child care that a correction order has been issued. In addition to providing notice to the parent of each child, the provider also shall post the correction order in a conspicuous location within the family child care until the violation has been corrected or for five days, whichever is longer.
6. The provider shall notify the parent of each child receiving care at the family child care and each staff member of the process for reporting a complaint or suspected licensing violation.
7. A family child care program that has been issued a correction order must be reinspected at the end of the period allowed for correction. If, upon reinspection, it is determined that the program has not corrected a violation identified in the correction order, a notice of noncompliance with the correction order must be mailed by certified mail to the program. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
8. If a family child care program receives more than one correction order in a single year, the provider may be referred by the department for consulting services to assist the provider in maintaining compliance and to avoid future corrective action.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

**75-03-08-30. Fiscal sanctions.**



1. ~~A The department shall assess a~~ fiscal sanction of twenty-five dollars per day ~~must be assessed~~ for each violation of subsections 1, 2, and 9 of section 75-03-08-14; subsection 3 of section 75-03-08-21.1; or section 75-03-08-23 for each day that the provider has not verified correction, after the allowable time for correction of ~~deficiencies~~ violations ends; ~~that the family child care home has not verified correction.~~
2. ~~A The department shall assess a~~ fiscal sanction of fifteen dollars per day ~~must be assessed~~ for each violation of section 75-03-08-09; subsections 8 and 10 of section 75-03-08-14; or subsection 13 of section 75-03-08-21.1 for each day that the provider has not verified correction, after the allowable time for correction of ~~deficiencies~~ violations ends; ~~that the family child care home has not verified correction.~~
3. ~~A The department shall assess a~~ fiscal sanction of five dollars per day ~~must be assessed~~ for each violation of any other provision of this chapter for each day that the provider has not verified correction, after the allowable time for correction of ~~deficiencies~~ violations ends; ~~that the family child care home has not verified correction.~~

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-07.4, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-07.4, 50-11.1-08

**75-03-08-31. Appeals.** An applicant or provider may appeal a decision to deny or revoke a license ~~by filing a.~~ A written appeal with the department must be postmarked or received by the department within ten calendar days of the applicant's or provider's receipt of written notice of such a the decision to deny or revoke the license. Upon receipt of a timely appeal, an administrative hearing ~~must will~~ be conducted in the manner ~~provided in prescribed by~~ chapter 75-01-03.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-08, ~~50-11.1-09~~ 50-11.1-10

## CHAPTER 75-03-09

**75-03-09-01. Purpose.** ~~The purpose of this chapter is to establish minimum standards of group child care and to assure that those standards are maintained. Repealed effective October 1, 2010.~~

**History:** ~~Effective December 1, 1981; amended effective January 1, 1999.~~

**General Authority:** ~~NDCC 50-11.1-08~~

**Law Implemented:** ~~NDCC 50-11.1-01~~

**75-03-09-02. Authority and objective.** ~~Pursuant to North Dakota Century Code section 50-11.1-08, the department may prescribe and promulgate such rules as are necessary to carry out the provisions of North Dakota Century code chapter 50-11.1. Repealed effective October 1, 2010.~~

**History:** ~~Effective December 1, 1981; amended effective January 1, 1987; January 1, 1999.~~

**General Authority:** ~~NDCC 50-11.1-08~~

**Law Implemented:** ~~NDCC 50-11.1-01~~

**75-03-09-03. Definitions.** ~~As The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:~~

1. ~~"Attendance" means the total number of children present at any one time at the group child care home or facility.~~
2. ~~"Caregiver" means any individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in a group child care home or facility under the guidance and supervision of the group child care operator.~~
3. ~~"County agency" means the county social service board in the county where the group child care home or facility is located.~~
4. ~~"Department" means the department of human services. "Child with special needs" means a child whose medical providers have determined that the child has or is at risk for chronic physical, developmental, behavioral, or emotional conditions.~~
5. ~~3. "Emergency designee" means an individual designated by the group child care operator to be a backup caregiver for emergency assistance or to provide substitute care.~~
6. ~~4. "Group child care home or facility" means a child care facility where program licensed to provide early childhood services are provided for eight through eighteen children or a facility, other than an occupied private residence, which serves fewer than eight eighteen or fewer children.~~



7. ~~"Group child care operator" means the individual or group who has the legal responsibility and the administrative authority for the operation of a group child care home or facility. The group child care operator is the applicant for license or the licensee under this chapter.~~
- 8- 5. "Group child care supervisor" means an individual responsible for overseeing the day-to-day operation of a group child care program.
6. "Infant" means a child who is less than twelve months of age.
7. "Medications" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
- 9- 8. "Operator" means group child care operator the individual or governing board who has the legal responsibility and the administrative authority for the operation of a group child care.
- 10- ~~"Staff member" means operator, substitute staff, volunteer, caregiver, or any other individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in the group child care home or facility.~~
9. "Provider" means the group child care owner or operator.
- 11- 10. "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month and are not regularly scheduled for work.
- 12- 11. "Volunteer" means an individual who visits or provides an unpaid service or visit, including a fireperson firefighter for fire safety week, McGruff, or Santa Claus person a practicum student, or a foster grandparent.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02

#### **75-03-09-04. Effect of licensing and display of license.**

1. The issuance of a license to operate a group child care home or facility is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.
2. The current license must be displayed prominently in the premises to which it applies.

3. The license must specify the maximum number of children who may be cared for by the group child care. The group child care may not admit a greater number of children than the license allows.

**History:** Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-03, 50-11.1-04

#### **75-03-09-05. Denial or revocation of license.**

1. A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-06.2, 50-11.1-09, and 50-11.1-10.
2. If an action to revoke a license is appealed, the ~~licenseholder~~ provider may continue the operation of the group child care ~~home or facility~~ pending the final administrative determination or until the license expires, whichever occurs first; ~~provided, however, that this, unless continued operation would jeopardize the health and safety of the children attending the group child care. This subsection does not limit the actions the department may take pursuant to North Dakota Century Code section sections 50-11.1-07.8 and 50-11.1-12.~~
3. The department may revoke a license to operate a group child care ~~home or facility~~ without first issuing a correction order or simultaneously with a suspension if continued operation would jeopardize the health and safety of the children present or would violate North Dakota Century Code section 50-11.1-09.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09, 50-11.1-10

#### **75-03-09-06. Provisional license.**

1. The director of a regional human service center, ~~in the director's discretion, or the director's designee, in consultation with the department,~~ may issue a provisional license for the operation of a ~~newly opened group child care home or facility or for a previously licensed group child care home or facility~~ although the group child care ~~home or facility~~ applicant or provider fails to, or is unable to, comply with all applicable standards and rules of the department.
2. A provisional license must:



- a. ~~Prominently state~~ State that the ~~group child care home or facility provider~~ has failed to comply with all applicable standards and rules of the department;
  - b. ~~State that the items of noncompliance are set forth on a document available upon request made to the group child care operator;~~
  - c. Expire at a set date, not to exceed six months from the date of issuance; and
  - d. Be exchanged for an unrestricted license, which bears ~~the same~~ an expiration date of one year from the date of issuance as of the provisional license, ~~upon demonstrating after the applicant or provider demonstrates~~ compliance, satisfactory to the department, with all applicable standards and rules.
3. ~~A~~ The department may issue a provisional license ~~may be issued~~ only to an applicant or provider who has waived, in writing:
    - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
    - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
  4. Any provisional license issued must be accompanied by a written statement of violations signed by the ~~regional~~ director of the regional human service center or the ~~regional~~ director's designee and must be acknowledged in writing by the ~~operator~~ provider.
  5. Subject to the exceptions contained in this section, a provisional license entitles the ~~holder~~ operator to all rights and privileges afforded the ~~holder~~ operator of an unrestricted license.
  6. The department ~~shall~~ may not issue a provisional license if the ~~facility~~ group child care is not in compliance with section 75-03-09-17 or 75-03-09-18.
  7. The ~~operator~~ provider shall ~~prominently~~ display prominently the provisional license and agreement.

8. The ~~operator~~ provider shall provide parents written notice that the ~~facility~~ group child care is operating on a provisional license and the basis for the provisional license.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC ~~50-11.1-07, 50-11.1-07.2~~ 50-11.1-03, 50-11.1-04, 50-11.1-08

**75-03-09-06.1. Restricted license.** The department may issue a restricted license:

1. To restrict an individual's presence when children are in child care;
2. To restrict a pet or animal from areas accessible to children; or
3. When necessary to inform the parents that the provider is licensed, but is restricted to operating in certain rooms or floors of the residence or restricted from using specific outdoor space of the residence.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04

**75-03-09-07. Application for and nontransferability of group child care license.**

1. An application for license must be submitted to the ~~county agency in the county in which the facility is located~~ authorized agent. Application must be made in the form and manner prescribed by the department.
2. ~~The A~~ A license issued under this chapter is nontransferable and valid only ~~on~~ for the premises indicated on the license. ~~A new~~
3. An application for a new license must be filed ~~by a licensed group child care home or facility~~ upon change of ~~group child care~~ provider or location.
4. The department may not issue more than one child care license per residence. A residence means real property that is typically used as a single family dwelling. This applies to new licenses issued on or after October 1, 2010. Existing operators will be exempt from this provision



until October 1, 2015, after which time all operators will be subject to the requirements of this subsection.

**History:** Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

**75-03-09-08. Duties of group child care operator provider.**

1. ~~The operator provider of a group child care home or facility is responsible to the department for compliance with requirements set forth in the standards and North Dakota Century Code chapter 50-11.1. In meeting this responsibility, the operator~~ The provider shall ensure:
  - a. ~~Establishment of~~ Establish the child care program;
  - b. ~~An application is made~~ Apply for a license for ~~each the~~ group child care home or facility operated;
  - c. ~~Creation of an outline of a written plan and policies for the operation of each group child care home or facility~~ Possess knowledge or experience in management and interpersonal relationships;
  - d. Formulate written policies and procedures for the operation of the group child care;
  - d. ~~e.~~ Notification is provided to the county agency Notify the authorized agent of any major changes in the operation or in the ownership or governing body of the group child care home or facility and of any staff or caregiver, including staff member changes;
  - e. ~~f.~~ Maintenance Maintain records of required enrollment, attendance, health, and related other required records;
  - f. ~~g.~~ Responsibility for all group child care home or facility staff, volunteers, or others who provide services in the home or facility and for having an emergency designee for backup emergency assistance Select an emergency designee;
  - g. ~~h.~~ Maintenance of Maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the group child care home or facility;
  - h. ~~i.~~ That Ensure the group child care home or facility is sufficiently staffed at all times to meet the child and staff ratios for children

in attendance and that no more children than the licensed capacity are served at any one time;

- i. ~~j.~~ ~~That~~ Ensure preadmission visits for children and their parents are offered in order that ~~so~~ the facility's program, fees, operating policies, and procedures can be viewed and discussed, including:
  - (1) An explanation of how accidents and illnesses may be ~~dealt with~~ handled; and
  - (2) ~~Methods~~ The methods of developmentally appropriate discipline and ~~developmentally appropriate~~ guidance techniques that are to be used;
  - (3) The process for reporting a complaint, a suspected licensing violation, and suspected child abuse or neglect;
  - (4) Hiring practices and personnel policies for staff members; and
  - (5) Informing parents that they may request daily reports for their child, including details regarding eating, napping, and diapering;
- j. ~~k.~~ ~~Within ninety days of the date of initial licensure or relicensure~~ Ensure that there are in place signed written agreements with the parents of each child that specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;
- k. ~~l.~~ ~~Parents are provided, upon request, any~~ Provide parents, upon request, with progress reports on their children, and provide unlimited opportunities for parents to observe their children while in care, ~~however, providing.~~ Providing unlimited access does not prohibit a group child care home or facility from locking its doors while children are in care;
- l. ~~m.~~ ~~Parents are provided~~ Provide parents with the name of the group child care home or facility's operator provider, the group child care supervisor, staff members, and the emergency designee;
- m. ~~n.~~ ~~The reporting of~~ Report, as a mandatory reporter, any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1 and within ninety days from the date of initial licensure or relicensure ~~the development of a written policy for staff to handle this reporting~~ section 50-25.1-03;
- n. ~~o.~~ ~~The development of and~~ Develop and ensure compliance with a written policy and procedure for accountability when a normally



unaccompanied child fails to arrive for as expected at the program group child care; and

- ~~o. p.~~ There is, at all times when children are receiving care, a ~~Ensure,~~ whenever services are provided, that at least one staff member, on duty who meets current certification requirements in basic cardiopulmonary resuscitation by that meets the requirements of the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department, and is certified or trained in a first-aid program approved by the department department-approved program to provide first aid. Substitute staff are exempt from this requirement. If a provider utilizes a substitute or emergency designee who is not certified in cardiopulmonary resuscitation or first aid when no other staff member who is certified is on duty, the provider shall notify the parents of the date and time that the substitute or emergency designee will be caring for the children.
- 2. If the ~~operator of the group child care home or facility provider~~ is also the group child care supervisor, the ~~operator provider~~ shall also meet the qualifications of the supervisor in section 75-03-09-10.
- 3. The ~~operator of a facility provider~~ shall report ~~within twenty-four hours to the county director or the county director's designee~~ a authorized agent within twenty-four hours:

  - a. A death or serious accident or illness requiring hospitalization of a child while in the care of the ~~facility~~ group child care or attributable to care received in the ~~facility~~ group child care;
  - b. An injury to any child which occurs while the child is in the care of the group child care and which requires medical treatment;
  - c. Poisonings or errors in the administering of medication;
  - d. Closures or relocations of child care programs due to emergencies; and
  - e. Fire that occurs and explosions that occur in or on the premises of the group child care.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-09-09. Staffing requirements.**

1. The number of staff members and their ~~use shall~~ responsibilities must reflect program requirements, individual differences in the needs of the children enrolled, and ~~shall may~~ permit flexible groupings, if necessary.
2. The minimum ratio of ~~caregivers or program staff~~ members responsible for caring for or teaching children to children in group child care must be:
  - a. If all children in care are children less than ~~twenty-four~~ eighteen months of age, one staff member may care for four children, a ratio of .25 in decimal form;
  - b. If all children in care are children ~~twenty-four~~ eighteen months of age to thirty-six months of age, one staff member may care for five children, a ratio of .20 in decimal form;
  - c. If all children in care are children thirty-six months of age to four years of age, one staff member may care for seven children, a ratio of ~~.142~~ .14 in decimal form;
  - d. If all children in care are children four years of age to five years of age, one staff member may care for ten children, a ratio of .10 in decimal form;
  - e. If all children in care are children five years of age to six years of age, one staff member may care for twelve children, a ratio of .08 in decimal form;
  - f. If all children in care are children six to twelve years of age, one staff member may care for eighteen children, a ratio of .05 in decimal form; and
- g. If children in care are of mixed-age categories, the staff to child ratio is calculated in accordance with subsection 6.
3. The ~~operator~~ provider of a group child care ~~home or facility~~ shall ensure that the ~~facility~~ group child care is sufficiently staffed at all times to meet the child and staff ratios for children in attendance, and that no more children than the licensed capacity are served at one time.
4. If a child in care ~~has a disabling condition which requires more than usual~~ with special needs is admitted to the group child care, the child's developmental age level must be used in determining the number of children for which care can be provided.
5. ~~Children~~ The provider shall ensure that children with special conditions needs requiring more than usual care and supervision ~~shall~~ have adequate care and supervision provided to them without adversely



affecting care provided to the remaining children in the group child care ~~home or facility~~.

6. The When there is a mixed-age group, the number of children in each age category is multiplied by the corresponding ratio number, converted to decimal form, and carried to the nearest hundredth. To determine the number of ~~caregivers~~ staff members responsible for caring for or teaching children necessary at any given time, numbers of ~~caregivers~~ staff members for all age categories are added, and any fractional ~~caregiver~~ staff member count is then rounded to the next highest whole number whenever the fractional ~~caregiver~~ staff member count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.
7. Children using the ~~licensed facility~~ group child care for a McGruff safe house, a block house, or a certified safe house program during an emergency ~~shall~~ are not be counted under this section.

**History:** Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; January 1, 1989; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC ~~50-11.1-02~~; 50-11.1-02.1, 50-11.1-04, 50-11.1-08

#### **75-03-09-10. Minimum qualifications of group child care supervisor.**

1. A group child care supervisor must be an adult of good ~~mental and physical, cognitive, social, and emotional~~ health, ~~capable of and shall use~~ mature judgment, ~~and shall possess knowledge and experience in management and interpersonal relationships~~ when making decisions impacting the quality of child care.
2. The group child care supervisor shall meet at least one of the following qualifications, in addition to those set out in subsection 1:
  - a. A bachelor's degree in the field of early childhood education;
  - b. A bachelor's degree with at least twelve semester hours or fifteen quarter hours in child development, child psychology, or directly related ~~fields directly related thereto~~;
  - c. An associate of arts degree in the field of early childhood development;
  - d. ~~Certification~~ Current certification as a child development associate or similar status ~~where such a local, state, or federal certification program exists~~;

- e. Certification from a Montessori teacher training program;
  - f. At least one year of exclusive experience as a registered self-declaration holder or licensed child care provider with positive references from at least two parents whose children were in the provider's care;
  - g. A high school degree or equivalency with certification of completion in a secondary occupational child care program and at least one year of exclusive experience working with young children, with references from at least two individuals who either had their children in the provider's group child care supervisor's care or instructed the provider group child care supervisor in child care programming; or
  - h. A minimum of one year of exclusive experience providing care to three or more preschool-age children, with positive references from at least two parents whose children were in the provider's group child care supervisor's care; or a center director or teacher who observed the group child care supervisor's care of children first hand.
  - ~~i. Qualification under regulations in force and effect for group child care supervisors prior to July 1, 1981.~~
3. The group child care supervisor shall:
- a. Have current certification in basic cardiopulmonary resuscitation by that meets the requirements of the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department; and
  - b. Be certified or trained in a department-approved program to provide first aid.
4. The group child care supervisor shall certify ~~attendance at completion of~~ a minimum of ten hours of ~~county-approved department-approved~~ training related to child care annually. The ten hours of training in the first year following initial licensure must include a six-hour course in basic child care training department-approved basic child care course taken during the first three months of employment.



5. The group child care supervisor must be ~~physically~~ present in the ~~home or facility~~ group child care no less than sixty percent of the time when children are in care.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-09-11. Duties of group child care supervisor.** The group child care supervisor shall, ~~co~~extensive in collaboration with the group child care ~~operator~~ provider, shall:

1. ~~Be responsible for planning, supervision, and activity~~ Plan, supervise, and conduct daily activities in the group child care; and
2. Ensure that ~~caregivers~~ staff members and children under the age of eighteen shall have adult supervision in the group child care ~~home or facility~~ at all times;.
3. Develop and deliver orientation for new staff members and keep a record of the items covered during orientation; and
4. Instruct each employee of the group child care of the process for reporting a complaint, a suspected licensing violation, or a suspected child abuse or neglect incident.

**History:** Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-09-12. Minimum qualifications for all ~~caregivers~~ staff members responsible for caring for or teaching children.** ~~Caregivers~~ Staff members shall:

1. Be at least fourteen years of age, provided that each ~~such individual~~ staff member under age sixteen provides written parental consent for ~~such~~ employment as a staff member, and the employment arrangements comply with North Dakota Century Code chapter 34-07. A member of the immediate family of the ~~group child care~~ provider may provide care if ~~such~~ the family member is at least twelve years of age;.
2. ~~Be mentally, physically, and emotionally able to provide adequate care for the children under supervision.~~ Individuals of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;

3. Receive orientation related to child care policies, emergency procedures, special needs of children in care, and program group child care activities during the first week of caregiving work;
4. ~~At~~ Ensure that at no time place a child is placed in an environment that would be harmful or dangerous to a the child's physical, cognitive, social, or emotional health;
5. ~~Certify attendance at county-approved training related to child care annually.~~ completion of a department-approved basic child care course within their first three months of employment with the exception of substitute staff and emergency designees;
6. Shall certify the staff member's own completion of department-approved training related to child care annually as set forth below:
  - a. A caregiver staff member working thirty to forty or more hours per week shall certify a minimum of eight hours of county-approved department-approved training annually;
  - b. A caregiver staff member working fewer than thirty and at least twenty to thirty hours per week shall certify a minimum of six hours of county-approved department-approved training annually;
  - c. A caregiver staff member working fewer than twenty and at least ten to twenty hours per week shall certify a minimum of four hours of county-approved department-approved training annually;
  - d. A caregiver staff member working less fewer than ten hours per week shall certify a minimum of two hours of county-approved department-approved training annually; and
  - e. An emergency backup care worker designee is exempt from county-approved department-approved annual training; and
7. Ensure safe care for the children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so the staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible for caring for or teaching children being available for assistance and care so that the child's health and safety are protected.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08



**75-03-09-12.1. Minimum qualifications of volunteers.** If a volunteer is providing child care, the volunteer shall meet the qualifications of a staff member responsible for caring for or teaching children and shall receive orientation for all assigned tasks.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-09-13. Minimum health requirements for all applicants, operators, and staff members.**

1. ~~Each operator or caregiver shall complete a health self-certification form certifying that the operator or caregiver does not have health problems that would interfere with his or her functioning as a caregiver or that would be detrimental to the health of the children or other staff. If the operator adds or replaces a caregiver after the licensure process is complete, the operator shall submit a self-certification form completed by the new caregiver to the county agency within five working days of the caregiver's first workday.~~
2. ~~Each operator or caregiver shall furnish documentation of a negative Mantoux tuberculosis test prior to initial licensure or employment, and every two years thereafter. If the group child care operator adds or replaces a caregiver after the licensure process is complete, the caregiver shall furnish documentation of a negative Mantoux tuberculosis test before the first day of employment. Substitute staff are exempted from this requirement. A group child care operator who uses an untested emergency designee may not be found in violation of this provision.~~
3. ~~If the physical or mental, cognitive, social, or emotional health capabilities of an operator applicant or a caregiver appears staff member appear questionable, the department may require the individual to be evaluated by appropriate professionals, with the results provided to the department present evidence of the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for the costs of any required evaluation.~~
4. ~~2. While children are in care, A staff members shall member or household member may not use or be under the influence of any alcohol or judgment-altering illegal drugs or alcoholic beverages while caring for children.~~

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-1.1-08

**75-03-09-14. Minimum requirements for facility.**

1. ~~The provider shall ensure that the group child care home or facility must be is~~ properly lighted. If the lighting of the home or facility ~~group child care~~ appears questionable, the department or county agency ~~authorized agent~~ may require the operator ~~provider~~ to obtain additional lights ~~so that a minimum of fifty foot-candles of light is used in the areas generally used for children's activities.~~
2. ~~Safe~~ The provider shall ensure that safe and comfortable arrangements for naps for enrolled children ~~must be are~~ provided.
  - a. ~~The provider may allow a child to sleep or rest on the floor may be~~ used only when ~~the floor is~~ carpeted or padded, warm, free from drafts, and when each child has an individual blanket or sleeping mat.
  - b. ~~There must be a minimum space of two feet [58.42 centimeters] between each crib or cot. Aisles~~ The provider shall ensure that aisles between cots and cribs must be are a minimum space of two feet [58.42 centimeters] and are kept free of all obstructions while ~~they cots and cribs~~ are occupied.
  - c. ~~There must be~~ The provider shall ensure that there is a room available, separate from the nap room, where an individual child can go for supervised play if the child is unable to nap, so as not to disrupt the other children's rest.
  - d. ~~A~~ The provider shall ensure that a child who is in care between the hours of eight p.m. and six a.m. ~~shall have has~~ an individual sleeping place.
  - e. ~~Any child under twelve months of age or unable to walk unassisted must be provided sleeping space in a crib with a firm mattress or a playpen with adequate padding.~~
  - f. ~~A staff member may not place a child on a waterbed unless the child has attained both a developmental and chronological age of thirty-six months.~~
3. Water supply:
  - a. ~~The provider shall ensure that the group child care home or facility must have has~~ a drinking supply from a community water system or from a source tested and approved by the state department of health.
  - b. ~~The group child care home or facility must have hot and cold running water. Hot water heaters must be turned down or there~~



~~must be a tempering valve or antiscalding device on~~ The water in the faucets used by children so that the temperature of hot water supplied to lavatories and bathing facilities does must not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].

4. Toilet and ~~lavatory~~ sink facilities:

- a. ~~Toilet~~ The provider shall provide toilet and lavatory sink facilities must be provided and must be convenient which are easily accessible to the areas used by the children and staff.
- b. Toilets must be located in rooms separate from those used for cooking, eating, and sleeping. A minimum of one ~~lavatory sink~~ and one flush toilet must be provided for each fifteen children, excluding those children who are not toilet trained. Two toilets must be provided for each sixteen to eighteen children, excluding those children who are not toilet trained.
- c. ~~Child-sized~~ The provider shall provide child-sized toilet adapters, training chairs, or potty chairs ~~must be provided~~ for use by children who require them. Training chairs must be emptied promptly and thoroughly cleaned and sanitized after each use.
- d. ~~At~~ The provider shall provide at least one handwashing lavatory must be provided sink per toilet room facility or diapering area. ~~Sanitary~~ The provider shall provide sanitary hand-drying equipment, ~~individual~~ individually designated cloth towels, or paper towels ~~must be provided~~ near handwashing ~~lavatories~~ sinks.
- e. ~~Safe~~ The provider shall provide safe step stools ~~must be provided~~ to allow standard-size toilets and ~~lavatories~~ sinks to be used by the children or the provider shall ensure the availability of child-size toilets and ~~lavatories must be provided~~ sinks.

5. ~~Sewage and wastewater disposal:~~

- a. ~~Any~~ The operator of a group child care home or facility not on a municipal or public water supply or wastewater disposal system shall ~~have its~~ ensure the group child care's sewage and wastewater system has been approved by the state department of health.

- b. ~~The group child care home or facility shall meet the requirements of the state plumbing code, North Dakota Administrative Code article 62-03.~~

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-09-15. Minimum standards for provision of transportation.**

1. ~~Within ninety days of the date of initial licensure or relicensure, the operator~~ Prior to licensure, the provider shall establish a written policy governing the transportation of children to and from the group child care home or facility, if the group child care home or facility provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the group child care home or facility. If the group child care home or facility provides transportation, the operator provider shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.
2. When transportation is provided by a group child care ~~home or facility~~, children must be protected by adequate staff supervision, safety precautions, and liability ~~and medical insurance~~.
  - a. ~~Child and staff ratios~~ Staffing requirements must be maintained to assure the safety of children while being transported.
  - b. A child may not be left unattended in a vehicle.
3. Children must be instructed in safe transportation conduct as appropriate to their age and stage of development.
4. The driver ~~shall~~ must be eighteen years of age or older and must comply with all relevant federal, state, and local laws, including child restraint system laws.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-09-16. Minimum emergency evacuation and disaster plan.**



1. ~~Each group child care home or facility provider shall, within ninety days of the date of initial licensure or relicensure,~~ establish and post an emergency disaster plan for the safety of the children in care. Written disaster plans must be developed in cooperation with ~~the authorities.~~ local emergency management agencies. The plan must include:
  - a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;
  - b. What will be done if parents are unable to pick up their child as a result of the emergency; and
  - c. What will be done if the group child care has to be relocated or must close as a result of the emergency.
2. Fire and emergency evacuation drills must be performed in accordance with the local fire department's guidelines.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

#### **75-03-09-17. Fire inspections.**

1. ~~Annual~~ The provider shall ensure that annual fire inspections ~~must be completed by local or state fire authorities on for all facilities group child cares in which care is provided to seven eight or more children who are not members of the immediate family of the group child care operator and upon facilities~~ any group child care providing care for any number of children in homes which are manufactured or mobile homes, in apartment buildings, homes in which care is provided to children in basements, and in homes that have alternative heating devices, such as wood burning stoves, propane heaters, or fireplaces. The ~~operator~~ provider shall have ~~corrected~~ any code violations noted by the fire inspector corrected and shall file reports of the inspections and any corrections with the ~~county licensing agency~~ authorized agent.
2. The ~~group child care home or facility~~ provider shall provide:
  - a. The ~~local~~ fire inspector's written statement of compliance with the local fire code, if there is one; or
  - b. The ~~local~~ fire inspector's written statement that the group child care ~~home or facility~~ has been inspected and that the inspector is satisfied that the facility meets minimum fire and safety standards; or,

- ~~c. A written statement from an appropriate fire official that the group child care home or facility meets the minimum fire and safety standards adopted by the state fire marshal.~~
- 3. The provider shall ensure that the group child care home or facility shall be is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department or state fire marshal.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-09-18. Minimum sanitation and safety requirements.**

1. In facilities other than an occupied private residence with license capabilities of thirteen up to eighteen children and where meals are prepared, the provider shall ensure that the state department of health shall conduct conducts an annual inspection. If only snacks or occasional cooking projects are prepared, a state department of health inspection is not required. The provider shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the authorized agent.
2. ~~Group~~ The provider shall ensure that the group child care home or facility bathroom lavatories sinks, toilets, tables, chairs, and floors must be are cleaned daily. Cots and mats, if used, must be maintained in a clean, sanitary condition.
3. The provider shall ensure that the group child care home or facility's building, grounds, and equipment must be are located, cleaned, and maintained to protect the health and safety of children. Routine maintenance and cleaning procedures must be established to protect the health of the children and the ~~caregivers~~ staff members.
4. ~~Caregivers~~ Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after nose wiping, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and towels ~~must be available at each lavatory.~~ Clean towels must be provided daily sanitary hand-drying equipment, individually designated cloth towels, or paper towels must be available at each sink.
5. ~~Indoor~~ The provider shall ensure that indoor and outdoor equipment, toys, and supplies must be are safe, strong, nontoxic, and in good repair. ~~All~~ The provider shall ensure that all toys must be easily cleanable and must be cleaned and sanitized on a routine basis and



- equipment are kept clean and in sanitary condition. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
6. ~~The provider shall ensure that the group child care home or facility's~~ ground areas must be ~~are~~ free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
  7. ~~Garbage must be~~ The provider shall ensure that garbage stored outside ~~is~~ kept away from areas used by children and ~~is~~ kept in containers with tight lids, ~~made of noncombustible materials.~~ Open burning is not permitted. The provider shall keep indoor garbage in covered containers. The provider may allow paper waste to be kept in open waste containers.
  8. ~~Exterior~~ The provider shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas ~~must be~~ are contained, ~~or~~ fenced, or have natural barriers, to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
  9. ~~Potential~~ The provider shall ensure that potential hazards, including such as noncovered electrical outlets, guns, household cleaning chemicals, uninsulated wires, medicines, and poisonous plants, ~~and open stairways may~~ are not be accessible to young children. ~~Guns must be kept~~ The provider shall keep guns and ammunition in locked storage, each separate from ammunition the other, or shall use trigger locks must be used. Ammunition must be kept in locked storage separate from all firearms. The provider shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
  10. ~~Indoor~~ The provider shall ensure that indoor floors and steps ~~may~~ are not be slippery ~~or~~ and do not have splinters. ~~Steps~~ The provider shall ensure that steps and walkways ~~must be~~ are kept free from accumulations of water, ice, snow, or debris.
  11. ~~Elevated~~ The provider shall ensure that elevated areas, ~~such as including stairs or~~ and porches, ~~must~~ have railings and safety gates where necessary to prevent falls.
  12. ~~The group child care operator~~ provider shall take steps to keep the group child care ~~home or facility~~ free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the group child care ~~home or facility.~~ Insect repellent may be applied outdoors on children with parental permission.

13. ~~Exit~~ The provider shall ensure that exit doorways and pathways ~~may~~ are not be blocked.
14. ~~Light~~ The provider shall ensure that light bulbs in areas used by children ~~must be~~ are properly shielded or shatterproof.
15. ~~Combustible~~ The provider shall ensure that combustible materials ~~must be~~ are kept away from light bulbs and other heat sources.
16. ~~There must be~~ The provider shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by local fire authorities. During the heating season when the group child care is occupied by children, the room temperature must not be less than sixty-five degrees Fahrenheit [18 degrees Celsius] and not more than seventy-five degrees Fahrenheit [24 degrees Celsius].
17. ~~All~~ A provider shall ensure that all group child care buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be present, ~~must have these painted surfaces repainted or must shall~~ submit evidence that the ~~surfaces~~ paints or finishes do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the state department of health.
18. ~~Personal~~ The provider shall ensure that personal items, including combs, pacifiers, and toothbrushes ~~must be,~~ are individually identified and stored in a sanitary manner.
19. ~~All pets present in the group child care home or facility must be properly immunized. Nondomestic animals such as skunks, opossum, or raccoon, whether or not regarded as pets, may not be present in the group child care home or facility. Pets may not be allowed in the kitchen or eating area during meal preparation or meals.~~ Pets and animals.
  - a. The provider shall ensure that only cats, dogs, and small pets that are contained in an aquarium or other approved enclosed container are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children.



- b. The provider shall ensure that animals are maintained in good health and are appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
  - c. The provider shall ensure parents are aware of the presence of pets and animals in the group child care.
  - d. The provider shall notify parents immediately if a child is bitten or scratched and skin is broken.
  - e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall immediately remove the pet if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
  - f. The provider shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The provider shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
  - g. The provider shall ensure that indoor and outdoor areas accessible to children must be free of animal excrement.
  - h. The provider shall ensure that the child care is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
20. ~~Wading~~ Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the group child care home or facility must be strictly supervised and must be emptied and cleaned shall empty, clean, and sanitize wading pools daily.
21. All swimming pools used by children must be approved annually by the local health unit.
22. ~~Smoking is not permitted in any group child care home or facility at any time during which a child who receives early childhood services from that group child care home or facility is present and receiving services.~~

**History:** Effective December 1, 1981; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, ~~50-11.1-02.2~~, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-09-19. Minimum requirements regarding space.**

4. ~~Each group child care home or facility shall provide adequate indoor and outdoor space for the daily activities of all children in attendance within the licensed capacity of the group child care.~~
2. ~~The group child care home or facility shall provide adequate space, indoors and out, for the daily activities of the children. This must include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, and space children are not permitted to occupy. If available outdoor play space does not accommodate the licensed capacity of the home or facility at one time, the operator shall prepare a written schedule of outdoor playtime which limits use of the play area to its capacity, giving every child an opportunity to play outdoors.~~
  1. There must be a minimum of thirty-five square feet [3.25 square meters] of appropriate indoor space per child in the group child care. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space that children are not permitted to occupy.
  2. There must be a minimum of seventy-five square feet [6.97 square meters] of appropriate outdoor play space per child for the group child care. If available outdoor play space does not accommodate the licensed capacity of the group child care at one time, the total appropriate outdoor play space available must be no less than the number of children in the largest class or group of the group child care multiplied by seventy-five square feet [6.97 square meters]. The provider shall prepare a written schedule of outdoor playtime which limits the use of the play area to its capacity, giving each class or group an opportunity to play outdoors daily.

**History:** Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-09-20. Program requirements.**

1. ~~The group child care home or facility operator~~ provider shall have a program of daily individual or small group activities appropriate to the ages and needs of the children in the group child care ~~home or facility~~. The program must include activities which foster sound social, intellectual cognitive, emotional, and physical growth, and the program must be developed with consideration of parental input. A written



daily routine including mealtimes, rest times, planned developmentally appropriate activities, free play, and outside time must be available to parents. The daily routine must be flexible enough to allow for spontaneous activity as appropriate.

2. The provider shall design the program ~~must be designed~~ with intervals of stimulation and relaxation, and a balance between periods of active play and quiet play or rest. The daily routine must be written, but subject to change. The daily routine must foster the development of good health habits and self-discipline, adequate indoor and outdoor play, rest, and sleep, with sufficient time and opportunities for various experiences.
3. The program must provide a variety of educational experiences for all ages of children served with an adequate supply of safe play equipment, toys, and materials for indoor and outdoor activity. Each ~~home or facility~~ group child care must have enough play materials and equipment so that, ~~at any one time,~~ each child in attendance may be individually involved individually or as a group.
4. Areas used for napping must provide an opportunity for undisturbed rest. ~~Napping~~ The provider shall set napping schedules ~~must be set~~ for children in consultation with their parents, according to the children's ages, and needs, ~~and the parent's wishes.~~
5. At the time of enrollment, the ~~group child care supervisor~~ provider shall meet with the parents to discuss the children's child's habits, activities, and schedules while at home and in school and the parent's special ~~concern~~ concerns about the children's child's past and future behavior and development. The provider shall design the schedule and activities ~~must be designed~~ to complement and supplement the children's child's experiences at home or in school.
6. The group child care ~~supervisor~~ provider shall contact parents to exchange information concerning the child and any concerns about the health, development, or behavior of the child. These concerns must be communicated to parents promptly and directly.
7. ~~Personal~~ Staff members shall stress personal hygiene practices appropriate for a child's age and development ~~must be stressed.~~
8. Each child's cultural and ethnic background and primary language or dialect must be respected by the ~~caregivers~~ staff members.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-09-21. Minimum standards for food and nutrition.**

1. When the ~~operator~~ provider is responsible for providing food to children, the food supplied must meet United States department of agriculture standards and must be properly prepared, sufficient in amount, nutritious, varied according to the diets of the children enrolled, and served at appropriate hours. Food that is prepared, served, or stored in the group child care must be treated in a safe and sanitary manner with safe and sanitary equipment.
2. When parents bring sack lunches for their children, the ~~operator may~~ provider shall supplement lunches, as necessary, to provide nutritious and sufficient amounts of food for children, and shall provide adequate and appropriate refrigeration and storage as required.
3. ~~Children shall be served a nutritious morning and afternoon snack, and, if the parent does not provide a sack lunch, a nourishing meal.~~
  - a. ~~Children in care for more than three hours shall receive either a snack or meal, whichever is appropriate to that time of day.~~
- b. ~~4. Children The provider shall serve nutritious meals to children in care during any normal mealtime hour shall be served food appropriate to that time of day.~~
- e. ~~5. Children The provider shall serve snacks to children in care after school who have not had any food since lunch shall be provided with a snack.~~
4. ~~6. When the operator provider is responsible for providing food to children, menus must be prepared posted on a daily or weekly basis and made available to the parents, the department, or other appropriate individuals.~~
5. ~~7. Information The provider shall consider information provided by the children's parents as to their eating habits, food preferences, or special needs must be considered in creating the feeding schedules and in the tailoring of menus.~~
6. ~~8. Children The provider shall be served serve snacks and meals to children in a manner commensurate with their age, using appropriate foods, portions, dishes, and eating utensils.~~



- 7- 9. ~~Children~~ The provider or staff member may be encouraged encourage children to eat the food served, but the provider or staff member may not be subjected to coercion coerce or force-feeding force-feed children.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

#### **75-03-09-22. Records.**

1. The provider shall keep a copy of this chapter on the premises of the group child care and shall make it available to staff members at all times.
2. ~~The group child care home or facility~~ provider shall maintain the following records:
  - a. The child's full name, birthdate, and current home address;
  - b. ~~Names~~ Legal names of the child's parents ~~or legal guardian~~, and the business and ~~home~~ personal telephone numbers where ~~those individuals may they can~~ be reached;
  - c. Names and telephone numbers of individuals who may assume responsibility for the child if the ~~individual~~ individuals legally responsible for the child ~~may not~~ cannot be reached immediately in an emergency;
  - d. A written statement from the parents ~~or legal guardian~~ authorizing emergency medical care;
  - e. Names and telephone numbers of individuals authorized to take the child from the group child care ~~home or facility~~;
  - f. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, or have on file a document citing that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs, unless the child is a drop-in or school-aged school-age child; and
  - g. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child; ~~that which~~ must indicate any special precautions for diet, medication, or activity, must serve as evidence that a child is physically able to take part in the child care program, and must. This assessment must be completed annually.

3. The provider must verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the provider considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
2. 4. ~~All~~ The provider shall ensure that all records, photographs, and information maintained with respect to children receiving child care services must be are kept confidential, and that access must be is limited to staff members, the parents, or legal guardian of each child, and to the following, unless otherwise protected by law:
  - a. ~~Authorized county agency~~ The authorized agent and department representatives;
  - b. Individuals having a definite interest in the well-being of the children concerned and who, in the judgment of the department, are in a position to serve the children's interests should that be necessary; and
  - c. Individuals who possess a written authorization from the child's parent ~~or legal guardian~~. The group child care home ~~or facility~~ shall have a release of information form available and shall have the form signed prior to the release of information.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-09-23. Discipline - Punishment prohibited.** Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury, neglect, or abuse to any child is grounds for denial or revocation.

1. The group child care home ~~or facility~~ must, ~~within ninety days of the date of initial licensure or relicensure~~ have a written policy regarding the discipline of children ~~that must be interpreted to~~. The provider shall provide the policy to, and discuss the policy with, staff members before the group child care home ~~or facility~~ begins operation or before staff members begin working with children.
2. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, ~~praise for~~ praising appropriate behavior, ~~and or~~ gentle physical restraint, such as holding. ~~Children~~ A child may not be subjected to physical harm, fear, or humiliation.



3. Authority to discipline may not be delegated to ~~or children nor may discipline be accomplished administered~~ by children.
4. Separation, when used as discipline, must be ~~brief and~~ appropriate to the child's age development and circumstances. ~~Any The~~ child must be in a safe, lighted, well-ventilated room within sight or hearing range of an adult a staff member responsible for caring for or teaching children. ~~A staff member may not isolate a child may not be isolated~~ in a locked room or closet.
5. A child may not be ~~physically~~ punished for lapses in toilet training.
6. ~~When addressing a child, or while in the presence of a child, staff members~~ A staff member may not use verbal abuse or make derogatory remarks about the child, the child's family, race, or religion nor use profane, threatening, unduly loud, or otherwise abusive language when addressing a child or in the presence of a child.
7. A staff member may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
8. ~~A child~~ A staff member may not be force-fed, force-feed a child or coerce a child to eat unless medically prescribed and administered under a physician's medical provider's care.
- 8- 9. ~~Deprivation~~ A staff member may not use deprivation of meals may not be used or snacks as a form of discipline or punishment.
- 9- 10. A staff member, household member, or any other adult in or at the group child care may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child may not be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by any staff member or any other adult in the facility.
11. A staff member may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in the mouth of a child to deter the child from biting other children.
12. A staff member may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-09-24. Specialized types of care and minimum requirements therefor.**

1. Infant care.

a. Environment and interactions.

(1) A group child care ~~home or facility~~ serving children from birth to ~~twenty-four~~ twelve months shall provide an environment which protects the children from physical harm ~~and is not so restricted as to inhibit physical, intellectual, emotional, and social development.~~

(2) The provider shall ensure that each infant receives positive stimulation and verbal interaction with a staff member responsible for caring for or teaching children, or emergency designee, such as being held, rocked, talked with, or sung to.

(3) The staff members responsible for caring for or teaching children, or emergency designee, shall respond promptly to comfort an infant's or toddler's physical and emotional distress.

(a) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and

(b) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.

b. (4) ~~Nonwalking children~~ The provider shall ensure that infants have the opportunity frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, and uncluttered area.

c. ~~Each infant shall have an individual sleeping space. The sheets must be changed whenever they become soiled or wet. If individual protective coverings are used for each child to protect linens, the protective coverings must be laundered at least weekly.~~

d. ~~Children must be taken outdoors or to other areas within the group child care home or facility for a part of each day to provide some change of physical surroundings and to be with other children. A child may not be confined to a crib or playpen during the entire time at the group child care home or facility, unless the child is preparing to sleep or sleeping for the duration of the care.~~

e. ~~Each infant shall have periodic individual personal contact and attention from an adult, such as being held, rocked, talked to, or sung to.~~



- f. ~~Low chairs and tables or infant seats with trays must be provided for table play and mealtime for children no longer being held for feeding. Highchairs, if used, must have a wide base and a safety strap.~~
- g. ~~Children may not be shaken or jostled.~~
- h. ~~All cries of infants must be investigated.~~
- i. ~~Infants must be fed or supervised individually and the diet and pattern of feeding must be appropriate to the individual developmental needs and parent's wishes.~~

(5) Staff members responsible for caring for or teaching children must take children outdoors or to other areas within the group child care for a part of each day to provide some change of physical surroundings and to be with other children.

(6) When a child is awake, staff members may not confine the child to a crib, portable crib, or other equipment for longer than twenty minutes, taking into consideration the child's emotional state.

(7) The provider shall ensure that infants are not shaken or jostled.

(8) The provider shall ensure that low chairs and tables or high chairs with trays must be provided for mealtime for infants no longer being held for feeding. High chairs, if used, must have a wide base and a safety strap.

(9) The provider shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.

b. Feeding.

j. (1) ~~Infants must be~~ The provider shall ensure that infants are provided age-appropriate developmentally appropriate nutritious foods. Only breast milk or iron-fortified artificial milk, meeting the requirements of the Infant Formula Act of 1980 [Pub. L. 96-359; 94 Stat. 1190; 21 U.S.C. 301 note et seq.], infant formula may be fed to infants less than six months of age, unless otherwise instructed in writing by the infant's parent or medical provider.

k. (2) ~~Infants must be~~ The provider shall ensure that infants are fed only the specific brand of artificial baby milk iron-fortified infant formula requested by the parent. Staff members shall

use brand-specific mixing instructions unless alternative mixing instructions, ~~based upon directions of~~ are directed by a child's physician, ~~are provided~~ medical provider.

- ~~l.~~ (3) ~~Mixed formula, in single bottles or batches,~~ The provider shall ensure that mixed formula that has been unrefrigerated more than one hour, ~~must be~~ is discarded.
- ~~m.~~ (4) ~~Frozen~~ The provider shall ensure that frozen breast milk ~~must be~~ is thawed under cool running tap water, ~~or in the refrigerator~~ in amounts needed. Unused, thawed breast milk must be discarded ~~or given to the parent~~ at the end of each day.
- ~~n.~~ (5) ~~An~~ The provider shall ensure that an infant ~~may~~ is not be fed by propping a bottle.
- ~~o.~~ (6) ~~Gereal~~ The provider shall ensure that cereal and other nonliquids or suspensions ~~may~~ are only be fed to an infant through a bottle on the written orders of the child's physician medical provider.
- ~~p.~~ (7) ~~Staff members may not leave~~ The provider shall ensure that a staff member responsible for caring for or teaching children is within sight and hearing range of an infant ~~unattended~~ during the infant's feeding or eating process.

c. Diapering.

- ~~q.~~ (1) ~~There must be~~ The provider shall ensure that there is a designated cleanable diapering area ~~station, located separately from food preparation and serving areas~~ in the group child care ~~home or facility~~ if children requiring diapering are in care. ~~Diapers must be~~
- (2) The provider shall ensure that diapers are changed promptly when needed ~~soiled or wet~~ and in a sanitary manner. ~~Infants~~
- (3) Diapers must be changed on a ~~cleanable~~ nonporous surface area which must be thoroughly cleaned with detergent and ~~sanitized and disinfected~~ after each diapering.
- ~~r.~~ (4) ~~Soiled~~ The provider shall ensure that soiled or wet disposable diapers ~~must be~~ are stored in a sanitary, ~~airtight covered~~ container ~~separate from other garbage and waste~~ until removed from the group child care ~~home or facility~~.

d. Sleeping.



- (1) The provider shall ensure that infants are placed on their back when sleeping to lower the risk of sudden infant death syndrome, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise. The infant's face must remain uncovered when sleeping.
- (2) The provider shall ensure that infants sleep in a crib with a firm mattress or in a portable crib with the manufacturer's pad that meets consumer product safety commission standards.
- (3) The provider shall ensure that if an infant falls asleep while not in a crib or portable crib, the infant must be moved immediately to a crib or portable crib.
- (4) Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.
- (5) The provider shall ensure that all items are removed from the crib or portable crib, except for one infant blanket and security item that does not pose a risk of suffocation to the infant.
- (6) The provider shall ensure that mattresses and sheets are tightly fitted. The provider shall ensure that sheets and mattress pads are changed whenever they become soiled or wet, when cribs are used by different infants, or at least weekly.
- (7) The provider shall ensure that each infant has an individual infant blanket.
- (8) The provider shall ensure that toys or objects hung over an infant crib or portable crib must be held securely and be of size and weight that would not injure an infant if the toy or object accidentally falls or if the infant pulls on the object.
- (9) The provider shall check on sleeping infants every fifteen minutes or have a monitor in the room with the sleeping infant.

## 2. Night care.

- a. Any group child care ~~home or facility~~ offering night care shall provide program modifications for the ~~special~~ needs of children and their parents during the night.
- b. In consultation with parents, special attention must be given by the ~~caregiver~~ staff member responsible for caring for or teaching children to provide a transition into this type of care, appropriate to the child's ~~emotional~~ needs.

- c. ~~When~~ The provider shall encourage parents to leave their children in care or pick them up before and after their normal sleeping period when practical, children must be left for care and picked up before and after their normal sleeping period to ensure minimal disturbance of the child during sleep, but with consideration must be given to the parent's parents' work schedule.
  - d. ~~Preschool-age children must be~~ The provider shall ensure that children under the age of six are supervised directly when bathing.
  - e. ~~Comfortable~~ The provider shall ensure that comfortable beds, cots, or cribs, complete with a mattress or pad, must be are available: and the provider shall ensure:
    - (1) Pillows and mattresses ~~must~~ have clean coverings.
    - (2) Sheets and pillowcases ~~must be~~ are changed as often as necessary for cleanliness and hygiene, at least weekly.
    - (3) If beds are used by different children, sheets and pillowcases ~~must be~~ are laundered before use by other children.
    - (4) Each bed or cot ~~must have~~ has sufficient blankets available.
  - f. ~~The child care home or facility~~ provider shall require each child in night care to have night clothing and a toothbrush marked for identification.
  - g. ~~For a group facilities~~ child care not operating out of an occupied private residence, ~~the staff members responsible for caring for or teaching children~~ must be awake and within listening distance hearing range during sleeping hours ~~in order to provide for the needs of children and to respond to an emergency. This provision does not apply to group homes.~~
3. ~~Drop-in group child care homes or facilities.~~
- a. ~~If a group child care home or facility serves drop-in children, schoolchildren, or before-school and afterschool children, the group child care home or facility must be sufficiently staffed to effectively handle admission records and explain the policies and procedures of the program and to maintain the proper staff member to child ratio.~~
  - b. The provider shall ensure that the program ~~must reflect~~ reflects the special individual needs of the children who are provided drop-in service care.



- c. ~~Admission~~ The provider shall ensure that records secured must comply with all enrollment requirements contained in section 75-03-09-22, except the immunization verification record requirement.
  - d. ~~Admittance~~ The provider shall ensure that admittance procedures must provide for a period of individual attention for the child in order to acquaint the child with the group child care home or facility, its equipment, and the staff members.
  - e. A group child care home or facility may not receive drop-in care or part-time children who, when added to the children in regular attendance, cause the group child care home or facility to exceed the total number of children for which the group child care home or facility is licensed.
4. A provider shall ensure that a group child care serving only drop-in care children complies with this chapter but is exempt from the following provisions:
- a. Subsection 5 of section 75-03-09-20, subdivision f of subsection 2 of section 75-03-09-22, and subsection 1 of section 75-03-09-25.
  - b. A group child care serving only drop-in care children is exempt from the outdoor space requirements.

**History:** Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-09-25. Minimum requirements for care of children** a child with special needs. When A provider shall make appropriate accommodations, as required by the Americans with Disabilities Act, to meet the needs of children with special needs are admitted, there must be appropriate provisions to meet those needs. The provider shall receive documentation of the child's special needs from the parent upon the child's enrollment.

- 1. When children a child with special needs are is admitted, the group child care supervisor shall consult with the child's parents, and with the parent's permission, the child's source of professional health care, or, when appropriate, other health and professional consultants to gain an understanding of the child's individual needs. The provider shall receive a written health care plan from the child's medical provider or parent with information related to the child's special needs, such as a description of the special needs, definition of the diagnosis, and general information for emergency and required care such as usual medications and procedures.

2. ~~Caregivers~~ The provider shall ensure staff members responsible for caring for or teaching children receive proper instructions as to the nature of the child's disability special needs and potential for growth and development.
3. ~~If the nature of the special needs or the number of children with special needs warrants added care, the group child care home or facility shall add sufficient staff and equipment as deemed necessary by the department to compensate for these needs.~~

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-09-26. Minimum provisions regarding emergency care for children.** ~~Within ninety days of the date of initial licensure or relicensure, the~~ The group child care home or facility shall must have written plans to respond to illness and emergencies, including burns, serious injury, and ingestion of poison. ~~Parents~~ The provider shall ensure that parents of enrollees must be are advised of these plans. Plans must provide for:

1. Establish emergency response procedures;
2. ~~The~~ Provide accessible posting of emergency response procedures ~~and require training for all staff members concerning those emergency procedures;~~
2. ~~The establishment of emergency response procedures.~~
3. ~~The~~ Require the availability of at least one working flashlight;
4. ~~At~~ Require at least one ~~state department of health approved~~ department-approved first-aid kit maintained and kept in a designated location, inaccessible to children, yet readily accessible to ~~caregivers~~ staff members at all times;
5. ~~A~~ Provide a working telephone line immediately accessible to the ~~caregivers~~ staff members with a list of emergency telephone numbers ~~accessibly~~ conspicuously posted adjacent to the telephone;
6. ~~Response~~ Require a plan for responding to minor illnesses and minor accidents when children are cared for in the ~~care of the~~ group child care home or facility and ~~available medical consultation regarding special care and medication;~~
7. ~~Written~~ Require written permission to dispense medication and proper instructions for the administration of medication obtained from the



parent, ~~if~~ of a child in the group child care ~~home or facility~~ who requires medication.

- a. ~~Medications~~ Medication prescribed by a ~~physician~~ medical provider must be accompanied by the ~~physician's~~ medical provider's written instructions as to dosage and storage, and labeled with the child's name and ~~dated~~ date.
  - b. ~~Medications~~ Medication must be stored in an area inaccessible to children, and ~~medications~~ medication stored in a refrigerator must be stored collectively in a spillproof container.
  - c. ~~A~~ The provider shall keep a written record of the administration of medication, including over-the-counter medication, ~~to~~ for each child ~~must be kept~~. Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child. ~~Completed~~ The provider shall include completed medication records ~~must be included in the child's record. For purposes of this subdivision, "medication" is defined as any drug or remedy which is taken or applied internally, orally, or topically.~~
8. ~~The designation of~~ Require a supervised temporary isolation area designated for a child who is too ill to remain in the group child care or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed:
- a. Parents are notified immediately and asked to pick up their child; and
  - b. First aid is provided and medical care is sought, as necessary.
9. ~~Provisions for emergency transportation, specifically that when a child is brought to another place for emergency care, the child is accompanied by an adult who remains~~ Identify a source of emergency health services available to the group child care, including:
- a. A prearranged plan for emergency medical care in which the parent of each enrolled child is advised of the arrangement; and
  - b. Provisions for emergency transportation, specifically that when a child is to be brought to another place for emergency care, an adult staff member responsible for caring for or teaching children shall remain with the child until medical personnel assume responsibility for the child's care and until the parent or legal guardian arrives. or emergency contact is notified;

10. ~~Practices in which~~ Establish and implement practices in accordance with guidance obtained through consultation with local or state department of health authorities regarding the exclusion and return of children with infectious or communicable conditions are excluded from the group child care home or facility until the condition may no longer be transmitted. Guidance regarding exclusion and return to the group child care home or facility shall be obtained through consultation with local or state health department authorities. The operator may obtain this guidance directly or through current published materials regarding exclusion and return to the group child care home or facility.; and
11. Require that the group child care operator inform parents in writing of any first aid administered to their child within twenty-four hours of the incident, and immediately notify parents of any injury which requires emergency care beyond first aid, and require each injury report to be made part of the child's record.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC ~~50-11.1-07, 50-11.1-07.2~~ 50-11.1-01, 50-11.1-04, 50-11.1-08

#### **75-03-09-27. Effect of conviction on licensure and employment.**

1. ~~A group child care home or facility operator~~ An applicant or provider may not be, and a group child care home or facility may not employ or allow, in any capacity that involves or permits contact between the employee emergency designee, group child care supervisor, staff member, or household member and any child cared for by the group child care home or facility, an individual, a provider, emergency designee, group child care supervisor, staff member, or household member who has been found guilty of, pled guilty to, or pled no contest to:
  - a. ~~An offense described in North Dakota Century Code chapters chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; or 12.1-18, kidnapping; or 12.1-27.2, sexual performances by children; or in North Dakota Century Code sections section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections 12.1-29-01, promoting~~



prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or on 14-09-22, abuse or neglect of a child;

- b. c. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes offenses identified in subdivision a; or
- b. c. An offense, other than an offense identified in subdivision a or b, if the department in the case of a group child care home or facility operator applicant, provider, or group child care supervisor or household member, or the group child care home or facility operator provider in the case of an employee a staff member or emergency designee, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the applicant's, provider's, emergency designee's, or staff member's ability to serve the public as a provider, emergency designee, or staff member.
3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
4. Within ninety days of the date of initial licensure or relicensure, the group child care home or facility The provider shall establish written policies and engage in practices that conform to those policies to effectively implement this section before the hiring of any staff.
3. For purposes of subdivision b of subsection 1, the department in the case of a group child care home or facility operator, or the group child care home or facility operator in the case of an employee, shall treat completion of a period of five years after final discharge from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.
4. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing upon an individual's

~~ability to serve the public in a capacity involving the provision of child care services.~~

5. If the department determines that a criminal history record check as described in North Dakota Century Code section 50-11.1-06.2 is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC ~~50-11.1-03~~ 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

**75-03-09-28. Child abuse and neglect determinations decisions.** If a probable cause determination or a decision that services are required A provider shall ensure safe care for the children receiving services in the provider's group child care. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that any a child has been abused or neglected by a an applicant, provider, emergency designee, staff member, or household member, that decision has a direct bearing on the applicant's or provider's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that individual any child has been abused or neglected by the applicant, provider, emergency designee, staff member, or household member, the applicant or provider shall furnish information satisfactory to the department, from which the department may can determine the applicant's, provider's, emergency designee's, or staff member's current ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability must be furnished to the group child care operator applicant or provider and to the regional director of the human service center or the regional director's designee for consideration and action on the group child care application or license. Each applicant, provider, emergency designee, and staff member in the group child care shall complete a department-approved authorization for background check form no later than the first day of employment. Household members over the age of twelve must complete a department-approved authorization for background check form at the time of



application or relicensure or upon obtaining residence at the location of the group child care.

**History:** Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08, 50-11.1-09

**75-03-09-29. ~~Allowable time periods for correction~~ Correction of deficiencies violations.**

1. ~~Deficiencies~~ Within three business days of the receipt of the correction order, the provider shall notify the parents of each child receiving care at the group child care that a correction order has been issued. In addition to providing notice to the parent of each child, the provider shall post the correction order in a conspicuous location within the facility until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
  - a. For a violation of section 75-03-09-09, section 75-03-09-23, subsection 9 of section 75-03-09-18, and subsections 6 and 10 of section 75-03-09-18, within twenty-four hours;
  - b. For a violation ~~or deficiency~~ requiring the hiring of a group child care supervisor with those qualifications set forth in section ~~75-03-09-11~~ 75-03-09-10, within sixty days;
  - c. For a ~~deficiency~~ violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-09-17, within sixty days;
  - d. For a ~~deficiency~~ violation that requires substantial building remodeling, construction, or change, within sixty days; and
  - e. For all other ~~deficiencies~~ violations, within twenty days.
- ~~2.~~ 3. All periods for correction begin on the date of receipt of the correction order by the licensee provider.
- ~~3.~~ 4. The regional supervisor of early childhood ~~program licensing~~ services may grant an extension of additional time to correct ~~deficiencies violations~~ violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the licensee provider and a showing that the need for the extension is created by unforeseeable circumstances and the licensee provider has diligently pursued the correction of the ~~deficiency~~ violation.

4. ~~5.~~ The operator provider shall furnish written notice of to the authorized agent upon completion of the correction order required corrective action to the county agency. The correction order is effective remains in effect until the county agency receives the notice authorized agent confirms the corrections have been made.
6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a group child care that has been issued a correction order. If, upon reinspection, it is determined that the group child care has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the group child care. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
7. If a group child care receives more than one correction order in a single year, the department or its authorized agent may refer the group child care for consulting services to assist the provider in maintaining compliance and to avoid future corrective action.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

#### **75-03-09-30. Fiscal sanctions.**

1. ~~A~~ The department shall assess a fiscal sanction of twenty-five dollars per day ~~must be assessed~~ for each violation of subdivision g of subsection 1 of section 75-03-09-08, subsection 2 of section 75-03-09-09, section 75-03-09-17, subsections 7, 10, and 14 of section 75-03-09-18, section 75-03-09-19, and section 75-03-09-23, for each day that the provider has not verified correction after the allowable time for correction of deficiencies ~~violations ends, that the group child care home or facility has not verified correction.~~
2. ~~A~~ The department shall assess a fiscal sanction of fifteen dollars per day ~~must be assessed~~ for each violation of subsection 2 of section 75-03-09-10, section 75-03-09-12, subsection 2 and subdivisions b and d of subsection 4 of section 75-03-09-14, section 75-03-09-15, subsections 3, 5, 8, 9, and 12 of section 75-03-09-18, subsections 2 and 4 of section 75-03-09-20, subsection 1 of section 75-03-09-21, and subsections 1 and 3 of section 75-03-09-24, for each day that the provider has not verified correction, after the allowable time for correction of deficiencies ~~violations ends, that the group child care home or facility has not verified correction.~~



3. A The department shall assess a fiscal sanction of five dollars per day must be assessed for each violation of any other provision of this chapter for each day that the provider has not verified correction after the allowable time for correction of deficiencies violations ends, that the group child care home or facility has not verified correction.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC ~~50-11.1-04~~ 50-11.1-01, 50-11.1-07.4, 50-11.1-08

**75-03-09-31. Appeals.** An applicant or provider may appeal a decision to deny or revoke a license by filing a written appeal with the department. The appeal must be postmarked or received by the department within ten calendar days of the applicant's or provider's receipt of written notice of such a the decision to deny or revoke the license. Upon receipt of a timely appeal, an administrative hearing may be conducted in the manner ~~provided in~~ prescribed by chapter 75-01-03.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC ~~50-11.1-04~~ 50-11.1-08, 50-11.1-10

## CHAPTER 75-03-10

**75-03-10-03. Definitions.** As The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Attendance" means the total number of children present at any one time at the facility.
2. ~~"Caregiver" means any individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in a child care center under the guidance and supervision of the child care center operator.~~
3. ~~"Child care center" means an early childhood facility where early childhood services are provided to nineteen or more children.~~
4. ~~"Child care center director" means any individual responsible for overseeing and planning the day-to-day child care center activities.~~
5. ~~"Child care center operator" means the individual who has the legal responsibility and the administrative authority for the operation of a child care center. The child care center operator is the applicant for license or the licensee under this chapter.~~
6. ~~"Child care center supervisor" means any individual with the responsibility for organizing and supervising daily program activities.~~
7. ~~"Department" means the North Dakota department of human services.~~  
"Child with special needs" means a child whose medical providers have determined that the child has or is at risk of chronic physical, developmental, behavioral, or emotional conditions.
3. "Director" means the individual responsible for overseeing the general operation and implementing the policies and procedures of the child care center.
- 8: 4. "Emergency designee" means an individual designated by the child care center operator to be a backup caregiver staff member for emergency assistance or to provide substitute care.
9. ~~"Parent" means an individual bearing the legal relationship of father or mother to a child enrolled in a child care center, including an individual who legally stands in place of a parent, including a legal guardian or custodian.~~
10. ~~"Staff member" means operator, substitute staff, volunteer, caregiver, or other individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in the child care center.~~



5. "Infant" means a child who is less than twelve months of age.
6. "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
7. "Operator" means the individual or governing board who has the legal responsibility and the administrative authority for the operation of a child care center.
- 44- 8. "Substitute staff" means ~~paid or unpaid~~ staff who work less than thirty-two hours per month and are not regularly scheduled for work.
9. "Supervisor" means any individual with the responsibility for organizing and supervising daily child care center activities.
- 42- 10. "Volunteer" means an individual who visits or provides an unpaid service ~~or visit, including a fireperson firefighter for fire safety week, McGruff, or Santa Claus person~~ a practicum student, or a foster grandparent.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02

#### **75-03-10-04. Effect of licensing and display of license.**

1. The issuance of a license to operate a child care center is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.
2. The current license must be displayed prominently in the premises to which it applies.
3. The license must specify the maximum number of children who may be cared for by the center. The center may ~~at no time~~ not admit a greater number of children than the license allows.

**History:** Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-03, 50-11.1-04

#### **75-03-10-05. Denial or revocation of license.**

1. A license may be denied or revoked under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-06.2, 50-11.1-09, and 50-11.1-10.
2. If an action to revoke a license is appealed, the ~~licenseholder~~ operator may continue the operation of the child care center pending the final administrative determination or until the license expires, whichever occurs first; provided, however, that this subsection does not limit the actions the department may take pursuant to North Dakota Century Code ~~section~~ sections 50-11.1-07.8 and 50-11.1-12.
3. The department may revoke a license to operate a child care center without first issuing a correction order or simultaneously with a suspension if continued operation would jeopardize the health and safety of the children present or would violate North Dakota Century Code section 50-11.1-09.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09, 50-11.1-10

#### **75-03-10-06. Provisional license.**

1. The director of a regional human service center, ~~in the director's discretion,~~ or the director's designee, in consultation with the department, may issue a provisional license for the operation of a ~~newly opened child care center or for a previously licensed child care center,~~ although the ~~child care center~~ applicant or operator fails to, or is unable to, comply with all applicable standards and rules of the department.
2. A provisional license must:
  - a. ~~Prominently state~~ State that the ~~child care center~~ operator has failed to comply with all applicable standards and rules of the department;
  - b. ~~State that the items of noncompliance are set forth on a document available upon request made to the child care center's operator;~~
  - c. Expire at a set date, not to exceed six months from the date of issuance; and
  - d. Be exchanged for an unrestricted license, which bears ~~the same~~ an expiration date of one year from the date of issuance as of



the provisional license, upon demonstrating after the applicant or operator demonstrates compliance, satisfactory to the department, with all applicable standards and rules.

3. ~~A~~ The department may issue a provisional license ~~may be issued~~ only to an applicant or operator who has waived, in writing:
  - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
  - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued must be accompanied by a written statement of violations signed by the ~~regional~~ director of the regional human service center or the ~~regional~~ director's designee and must be acknowledged in writing by the operator.
5. Subject to the exceptions contained in this section, a provisional license entitles the holder to all rights and privileges afforded the holder of an unrestricted license.
6. The department may not issue a provisional license if the ~~facility~~ center is not in compliance with section 75-03-10-17 or 75-03-10-18.
7. The operator shall ~~prominently~~ display prominently the provisional license and agreement.
8. The operator shall provide parents written notice that the ~~facility~~ center is operating on a provisional license and the basis for the provisional license.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-07, ~~50-11.1-07.2~~ 50-11.1-03, 50-11.1-04, 50-11.1-08

**75-03-10-06.1. Restricted license.** The department may issue a restricted license:

1. To restrict an individual's presence when children are in child care;
2. To restrict a pet or animal from areas accessible to children; or

3. When necessary to inform parents that the operator is licensed, but is restricted to operating in certain rooms or floors or restricted from using specific outdoor space.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04

**75-03-10-07. Application for and nontransferability of child care center license.** An application for a license must be submitted to the county agency in the county in which the facility is located authorized agent.

1. An applicant shall submit an application for a license to the authorized agent. Application must be made in the form and manner prescribed by the department.
2. The A license issued under this chapter is nontransferable and is valid only on for the premises that are indicated on the license.
3. A new An application for a new license must be filed by a licensed center the operator upon change of operator or location.
4. The department may not issue more than one child care license per residence. A residence means real property that is typically used as a single family dwelling. This applies to new licenses issued on or after October 1, 2010. Existing operators will be exempt from this provision until October 1, 2015, after which time all operators will be subject to the requirements of this subsection.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

**75-03-10-08. ~~Duties of child care center operator~~ Staffing and group size requirements.**

1. ~~The operator of a child care center is responsible to the department for compliance with the requirements set forth in the standards and North Dakota Century Code chapter 50-11.1. In meeting this responsibility, the operator shall ensure:~~
  - a. ~~Establishment of the child care program;~~
  - b. ~~An application is made for a license for each child care center operated;~~



- c. ~~Creation of an outline of a written plan and policies for the operation of each child care center;~~
- d. ~~Notification is provided to the county agency of any major changes in the operation or in the ownership or governing body of the child care center and of any staff or caregiver changes;~~
- e. ~~Liability insurance for bodily injury and property damage for the child care center is carried;~~
- f. ~~Formulation of written policies and procedures relating to:~~
  - (1) ~~Hiring practices and personnel policies for staff;~~
  - (2) ~~Methods for obtaining references and employment histories of staff;~~
  - (3) ~~Methods of conducting staff performance evaluations;~~
  - (4) ~~Children's activities, care, and enrollment; and~~
  - (5) ~~The responsibilities and rights of staff and parents;~~
- g. ~~Maintenance of required enrollment, attendance, health, financial, and related records;~~
- h. ~~Responsibility for all child care center staff, volunteers, or others who provide services in the facility and for notifying the department and county agency of any change of directors;~~
- i. ~~Maintenance of necessary information to verify staff qualifications and to ensure safe care for the children in the child care center;~~
- j. ~~Designation of a qualified director;~~
- k. ~~That parents of enrolled children and other interested parties are informed of the goals, policies, procedures, and content of the child care center's program, including:~~
  - (1) ~~An explanation of how accidents and illnesses may be dealt with; and~~
  - (2) ~~Methods of discipline and developmentally appropriate guidance techniques to be used;~~
- l. ~~That parents of enrolled children:~~

- (1) ~~Are advised of the center's service fees, operating policies and procedures, location, and the name, address, and telephone number of the operator and the director; and~~
- (2) ~~Receive written notice of the effective date, duration, scope, and impact of any significant changes in the center's services;~~
- m. ~~That the center is sufficiently staffed at all times to meet the child and staff ratios for children in attendance and that no more children than the licensed capacity are served at any one time;~~
- n. ~~That the child care center has sufficient qualified caregivers available to substitute for regularly assigned staff who are sick, on leave, or who are otherwise unable to be on duty;~~
- o. ~~That written agreements with the parents of each child specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;~~
- p. ~~That written policies are established which provide for emergency medical care, the care of children with special physical, emotional, or mental needs, if children with these needs are in care, and the treatment of illness and accident;~~
- q. ~~That written policies are established concerning the care and safeguarding of personal belongings brought to the child care center by children or others on their behalf;~~
- r. ~~Parents are provided unlimited access and opportunities to observe their children at any time while in care, and are provided regular opportunities to meet with caregivers before and during enrollment to discuss their children's needs;~~
- s. ~~Parents are provided, upon request, any progress reports on their children;~~
- t. ~~The reporting of any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1 and development of a written policy for staff to handle this reporting;~~
- u. ~~That there is, at all times when children are receiving care, a staff member on duty who meets current certification requirements in basic cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs and in a first-aid program approved by the department. Substitute staff are exempt from this requirement;~~



- ~~v. The development of and compliance with a procedure for accountability when a child fails to arrive for the program; and~~
  - ~~w. Carecheck information is made available to parents.~~
- ~~2. If the operator of the child care center is also the director, the operator shall also meet the qualifications of the director set forth in section 75-03-10-11.1.~~
  - ~~3. The operator of a facility shall report within twenty-four hours to the county director or the county director's designee a death or serious accident or illness requiring hospitalization of a child while in the care of the facility or attributable to care received in the facility. The number of staff members and their responsibilities must reflect program requirements and individual differences in the needs of the children enrolled, and may permit mixed-age groups, if necessary. Service personnel engaged in housekeeping and food preparation may not be counted in the child to staff ratio for periods of time when they are engaged in housekeeping or food preparation.~~
  2. The operator shall ensure that the center is sufficiently staffed at all times to meet the child to staff ratios for children in attendance and that no more children than the licensed capacity are served at one time. The minimum ratio of staff members responsible for caring for or teaching children to children in child care centers and maximum group size of children must be:
    - a. If all children in care are children less than eighteen months of age, one staff member may care for four children, a ratio of .25 in decimal form, with a maximum group size of eight children with two staff members;
    - b. If all children in care are children eighteen months of age to thirty-six months of age, one staff member may care for five children, a ratio of .20 in decimal form, with a maximum group size of ten children with two staff members;
    - c. If all children in care are children three years of age to four years of age, one staff member may care for seven children, a ratio of .14 in decimal form, with a maximum group size of fourteen children with two staff members;
    - d. If all children in care are children four years of age to five years of age, one staff member may care for ten children, a ratio of .10 in decimal form, with a maximum group size of twenty children with two staff members;

- e. If all children in care are children five years of age to six years of age, one staff member may care for twelve children, a ratio of .08 in decimal form, with a maximum group size of twenty-four children with two staff members; and
- f. If all children in care are children six years to twelve years of age, one staff member may care for eighteen children, a ratio of .05 in decimal form, with a maximum group size of thirty-six children with two staff members.

The provisions in this subsection relating to maximum group size do not apply to operators licensed prior to January 1, 1999, if those operators are otherwise qualified to operate a child care center. Any operator who discontinues operation of the child care center under a valid license or who fails to renew the operator's license upon its expiration will not be exempt subsequently from the requirements relating to maximum group size. The exemption for operators licensed prior to January 1, 1999, will end on January 1, 2015, after which time all operators will be subject to the requirements of this subsection.

- 3. If a child with special needs is admitted to the child care center, the child's developmental age level must be used to determine into which age group the child should be placed for determining child to staff ratios.
- 4. The operator shall ensure that a child with special needs requiring more than usual care and supervision has adequate care and supervision without adversely affecting care provided to the other children in the child care center.
- 5. When there are mixed-age groups in the same room, the group size must be consistent with the age of the majority of the children when no children age zero to eighteen months are in the group. When children age zero to eighteen months are in the mixed-age group, the group size may not exceed eight children.
- 6. When there is a mixed-age group, the number of children in each age category is multiplied by the corresponding ratio number, converted to decimal form, and carried to the nearest hundredth. To determine the number of staff members responsible for caring for or teaching children necessary at any given time, numbers of staff members for all age categories are added, and any fractional staff member count is then rounded to the next highest whole number whenever the fractional staff member count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.



7. Children using the child care center for a McGruff safe house, a block house, or a certified safe house program during an emergency are not counted under this section.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02.1, 50-11.1-04, 50-11.1-08

**75-03-10-09. Staffing and group size requirements Duties of child care center operator.**

1. ~~The number of staff members and their use shall reflect program requirements, individual differences in the needs of the children enrolled, and shall permit flexible groupings, if necessary. Service personnel engaged in housekeeping and food preparation may not be counted in the child and staff ratio for periods of time when so engaged. Children with special conditions requiring more than usual care and supervision shall have adequate care and supervision provided to them without adversely affecting care provided to the remaining children in the child care center.~~
2. ~~The operator of a child care center shall ensure that the center is sufficiently staffed at all times to meet the staffing requirements for children in attendance, and that no more children than the licensed capacity are served at one time. The minimum ratio of caregivers or program staff to children in child care centers and maximum groups size of children must be:~~
  - a. ~~If all children in care are children less than twenty-four months of age, one staff member may care for four children, a ratio of .25 in decimal form, with a maximum group size of eight children;~~
  - b. ~~If all children in care are children twenty-four months of age to thirty-six months of age, one staff member may care for five children, a ratio of .20 in decimal form, with a maximum group size of ten children;~~
  - c. ~~If all children in care are children three years of age to four years of age, one staff member may care for seven children, a ratio of .142 in decimal form, with a maximum group size of fourteen children;~~
  - d. ~~If all children in care are children four years of age to five years of age, one staff member may care for ten children, a ratio of .10 in decimal form, with a maximum group size of twenty children;~~

- e. ~~If all children in care are children five years of age to six years of age, one staff member may care for twelve children, a ratio of .08 in decimal form, with a maximum group size of twenty-four children; and~~
- f. ~~If all children in care are children six to twelve years of age, one staff member may care for eighteen children, a ratio of .05 in decimal form, with a maximum group size of thirty-six children.~~

~~The provisions in this subsection relating to maximum group size shall not apply to child care center operators licensed prior to January 1, 1999, if such child care center operators are otherwise qualified to operate a child care center. Any child care center operator who discontinues operation of the child care center under a valid license or who fails to renew such license upon expiration thereof shall not thereafter be exempt from the requirements relating to maximum group size.~~

- 3. ~~If a child has a disabling condition which requires more than usual care, the child's developmental age level must be used in determining the number of children for which care may be provided.~~
- 4. ~~When there are mixed age groups in the same room, the group size must be consistent with the age of the majority of the children when no infants, age zero to twenty-four months, or toddlers, age twenty-four months to thirty-six months, are in the mixed age group. When infants or toddlers are in the mixed age group, the group size for infants and toddlers must be maintained.~~
- 5. ~~The number of children in each age category is divided by the corresponding ratio number and carried to the nearest hundredth. To determine the number of caregivers necessary at any given time, numbers of caregivers for all age categories are added, and any fractional caregiver count is then rounded to the next highest whole number whenever the fractional caregiver count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.~~
- 6. ~~Children using the licensed facility for a McGruff safe house, a block house, or a certified safe house program during an emergency may not be counted under this section. The operator is responsible for compliance with the requirements set forth in this chapter and North Dakota Century Code chapter 50-11.1. The operator shall:~~
  - 1. Designate a qualified director and shall delegate appropriate duties to the director.



- a. The operator shall ensure that the director or a designated acting director is present at the center at least sixty percent of the time when the center is open;
  - b. The operator shall ensure that the individual designated as an acting director for an ongoing period of more than thirty days meets the qualifications of a director; and
  - c. The operator shall ensure that when the director and acting director are not present at the center, a person who meets the qualifications of a supervisor is on duty;
2. Apply for a license for the child care center;
3. Provide an environment that is physically and socially adequate for children;
4. Notify the authorized agent of any major changes in the operation, ownership, or governing body of the child care center, including staff member changes;
5. Ensure that liability insurance is carried to insure against bodily injury and property damage for the child care center;
6. Formulate written policies and procedures for the operation of the child care center relating to:
  - a. Hiring practices and personnel policies for staff members;
  - b. Methods for obtaining references and employment histories of staff members;
  - c. Methods of conducting staff member performance evaluations;
  - d. Children's activities, care, and enrollment; and
  - e. The responsibilities and rights of staff members and parents;
7. Maintain records of enrollment, attendance, health, and other required records;
8. Select an emergency designee;
9. Maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the child care center;

10. Ensure that parents of enrolled children and other interested parties are informed of the goals, policies, procedures, and content of the child care center's program, including:
  - a. An explanation of how the center will handle accidents and illnesses;
  - b. The methods of developmentally appropriate discipline and guidance techniques to be used;
  - c. The process for reporting a complaint, a suspected licensing violation, and suspected child abuse or neglect; and
  - d. Hiring practices and personnel policies for staff members;
11. Ensure that parents of enrolled children:
  - a. Are advised of the center's service fees, operating policies and procedures, location, and the name, address, and telephone number of the operator and the director;
  - b. Receive written notice of the effective date, duration, scope, and impact of any significant changes in the center's services; and
  - c. Receive notice that they may request written daily reports for their child, including details regarding eating, napping, and diapering;
12. Ensure that the center is sufficiently staffed at all times to meet the child to staff ratios for children in attendance and that no more children than the licensed capacity are served at any one time;
13. Ensure that the child care center has sufficient qualified staff members available to substitute for regularly assigned staff who are sick, on leave, or otherwise unable to be on duty;
14. Ensure that there are signed written agreements with the parents of each child that specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;
15. Ensure that written policies are established which address provision of emergency medical care, the care of a child with special needs when a child with special needs is in care, and the treatment of illness and accident;
16. Ensure that written policies are established concerning the care and safeguarding of personal belongings brought to the child care center by a child or by another on the child's behalf;



17. Provide parents with unlimited access and opportunities for parents to observe their children while in care, and provide parents with regular opportunities to meet with staff members responsible for caring for or teaching children before and during enrollment to discuss their children's needs. Providing unlimited access does not prohibit a child care center from locking its doors while children are in care;
18. Provide parents, upon request, with progress reports on their children;
19. Report immediately, as a mandatory reporter, suspected child abuse or neglect as required by North Dakota Century Code section 50-25.1-03;
20. Ensure, whenever services are provided, that at least one staff member, emergency designee, or substitute staff is on duty who meets the current certification requirements in cardiopulmonary resuscitation by the American heart association, American red cross, or other department-approved cardiopulmonary resuscitation training programs approved by the department, and is certified or trained in a department-approved program to provide first aid;
21. Develop and ensure compliance with a written policy and procedure for accountability when a normally unaccompanied child fails to arrive as expected at the child care center;
22. Ensure that staff members responsible for caring for or teaching children under the age of eighteen are supervised by an adult staff member;
23. Meet the qualifications of the director set forth in section 75-03-10-10, if the operator is also the director; and
24. Report to the authorized agent within twenty-four hours:
  - a. A death or a serious accident or illness requiring hospitalization of a child while in the care of the child care center or attributable to care received in the child care center;
  - b. An injury to any child which occurs while the child is in the care of the child care center and which requires medical treatment;
  - c. Poisonings or errors in the administering of medication;
  - d. Closures or relocations of child care programs due to emergencies; and
  - e. Fire that occurs or explosions that occur in or on the premises of the child care center.

**History:** Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by

the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** ~~NDCC 50-11.1-01, 50-11.1-02, 50-11.1-02.1~~ 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-10-10. Minimum qualifications of child care center supervisor director.** A supervisor director shall:

- ~~1. Have had training and demonstrated ability in working with children;~~
- ~~2. Meet at least one of the following qualifications:~~
  - ~~a. An associate degree in the field of early childhood development;~~
  - ~~b. Certification as a child development associate or similar status where such a local, state, or federal certification program exists;~~
  - ~~c. Certification from a Montessori teacher training program; or~~
  - ~~d. A high school diploma or high school equivalency with at least one year of experience in a child care or similar setting.~~
- ~~3. Possess the capacity and willingness to increase skills and competence through experience, training, and supervision;~~
- ~~4. Be an adult of good mental and physical health, capable of mature judgment, and shall possess knowledge and experience in interpersonal relationships;~~
- ~~5. Have current certification in basic cardiopulmonary resuscitation by the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department; and~~
- ~~6. Certify attendance at a minimum of thirteen hours of county agency approved training related to child care annually. Be an adult of good physical, cognitive, social, and emotional health, and shall use mature judgment when making decisions impacting the quality of child care.~~
2. Possess knowledge or experience in management and interpersonal relationships;
3. Hold at least one of the following qualifications, in addition to those set out in subsection 1:
  - a. A bachelor's degree in the field of early childhood education;



- b. A bachelor's degree with at least twenty-four semester hours or thirty quarter hours in child development, child psychology, or directly related fields, with at least six months of experience in a child care center or similar setting;
  - c. An associate of arts degree in the field of early childhood development with at least six months of experience in a child care center or similar setting;
  - d. A teaching certificate in elementary education with at least six months of experience in a child care center;
  - e. A current certification as a child development associate or a similar status, with at least one year of experience in a child care center or similar setting;
  - f. A bachelor's degree with at least twelve semester hours or fifteen quarter hours in child development, child psychology, or directly related fields, with at least one year of experience in a child care center or similar setting; or
  - g. Certification from a Montessori teacher training program with at least one year of experience in a Montessori school, child care center, or similar setting and at least twelve semester hours or fifteen quarter hours in child development, child psychology, early childhood education, or related fields; and
4. Certify annual completion of a minimum of thirteen hours of department-approved training related to child care.

**History:** Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-10-11. Duties of child care center director.** ~~The child care center director shall, coextensive in collaboration with the child care center operator, shall:~~

- 1. ~~Be responsible for program planning, supervision, and activity Plan, supervise, and conduct daily activities in the child care center;~~
- 2. ~~Be responsible for maintenance of Maintain required enrollment, attendance, health, financial, and related other required records;~~
- 3. ~~Be responsible for the screening, scheduling, supervision Screen, schedule, supervise, and be responsible for the conduct of staff members while staff members are on duty; and~~

4. ~~Ensure that a child care center has a director or a designated acting director who must be present at the center at least sixty percent of the time that the center is open; Perform other duties as delegated by the operator.~~
5. ~~Ensure that the individual designated as an acting director for an ongoing period of less than thirty days meets the qualifications of a child care supervisor; and~~
6. ~~Ensure that the individual designated as an acting director for an ongoing period of more than thirty days meets the qualifications of a child care center director.~~

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-10-11.1. Minimum qualifications of child care center director supervisor. A supervisor shall:**

1. ~~A child care center director must be an adult of good mental and physical health, capable of mature judgment, and shall possess knowledge and experience in management and interpersonal relationships.~~
2. ~~A child care center director shall meet at least one of the following qualifications, in addition to those set out in subsection 1:~~
  - a. ~~A bachelor's degree in the field of early childhood education with eight or more weeks of supervised student teaching experience in a child care center or similar setting;~~
  - b. ~~A bachelor's degree with at least twenty-four semester hours or thirty-quarter hours in child development, child psychology, or fields directly related thereto, with at least six months of experience in a child care center or similar setting;~~
  - c. ~~An associate degree in the field of early childhood development with at least six months of experience in a child care center or similar setting;~~
  - d. ~~A teaching certificate in elementary education with at least six months of experience in a child care center and at least twelve semester hours or fifteen-quarter hours in child development, child psychology, early childhood education, or related fields;~~



- e. ~~Certification as a child development associate or similar status where such a local, state, or federal certification program exists, with at least one year of experience in a child care center or similar setting;~~
  - f. ~~A bachelor's degree with at least twelve semester hours or fifteen quarter hours in child development, child psychology, or fields directly related thereto, with at least one year of experience in a child care center or similar setting; or~~
  - g. ~~Certification for a Montessori teacher training program with at least one year of experience in a Montessori school, child care center, or similar setting and at least twelve semester hours or fifteen quarter hours in child development, child psychology, early childhood education, or related fields.~~
3. ~~The director shall certify attendance at a minimum of thirteen hours of county-approved training related to child care annually. Be an adult of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;~~
  2. Have a demonstrated ability in working with children;
  3. Hold at least one of the following qualifications:
    - a. An associate degree in the field of early childhood development;
    - b. Current certification as a child development associate;
    - c. Certification from a Montessori teacher training program; or
    - d. A high school diploma or high school equivalency with at least one year of experience in a child care or similar setting;
  4. Possess knowledge and experience in building and maintaining interpersonal relationships;
  5. Meet current certification requirements in basic cardiopulmonary resuscitation that meets the requirements of the American heart association, American red cross, or other cardiopulmonary resuscitation training programs approved by the department;
  6. Be certified or trained in a department-approved program to provide first aid;
  7. Successfully complete a department-approved basic child care course within the first three months of employment; and

8. Successfully complete a minimum of thirteen hours of department-approved training related to child care.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-10-11.2. Duties of the child care center supervisor. The supervisor, in collaboration with the director, shall:**

1. Communicate with parents about the individual needs of their children, including any special concerns the parents may have;
2. Plan daily and weekly schedules of activities and make those plans available to parents; and
3. Ensure that program policies are adhered to in the classes and groups assigned to the supervisor.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-10-12. Minimum qualifications for all caregivers staff members responsible for caring for or teaching children.**

1. ~~Garegivers shall~~ Staff members:
  - a. ~~Be~~ Shall be at least fourteen years of age, provided that each ~~such individual staff member~~ under age sixteen has written parental consent for ~~such employment~~ as a staff member, and the employment arrangements comply with North Dakota Century Code chapter 34-07;
  - b. ~~Be mentally, physically, and emotionally able to provide adequate care for the children under supervision;~~ Shall be individuals of good physical, cognitive, social, and emotional health and shall use mature judgment when making decisions impacting the quality of child care;
  - c. ~~Certify~~ Shall certify completion of a department-approved basic child care course within the first three months of employment, with the exception of substitute staff members and emergency designees;
  - d. Shall certify the staff member's own annual attendance at county-approved successful completion of the department-approved training related to child care; as set forth below:



- (1) If working ~~thirty to forty~~ or more hours per week, certify thirteen hours of ~~county-approved~~ department-approved training annually;:
  - (2) If working fewer than thirty hours and more than twenty to thirty hours per week, certify eleven hours of ~~county-approved~~ department-approved training annually;:
  - (3) If working fewer than twenty hours and at least ten to twenty hours per week, certify nine hours of ~~county-approved~~ department-approved training annually;: and
  - (4) If working ~~less fewer~~ than ten hours per week, certify seven hours of ~~county-approved~~ department-approved training annually; and
- d. ~~Not use or be under the influence of any alcohol or judgment-altering drugs while children are in care; and~~
  - e. ~~At no time~~ Shall not place a child in an environment that would be harmful or dangerous to a the child's physical, cognitive, social, or emotional health;:
2. ~~Newly hired caregivers shall have~~ Receive a two-day, onsite orientation to the child care program during the first week of employment. The director shall document orientation of each staff member responsible for caring for or teaching children on an orientation certification form. The orientation must address the following:
    - a. Emergency health, fire, and safety procedures ~~at~~ for the center;
    - b. The importance of handwashing and sanitation procedures to reduce the spread of infection and disease among children and staff members;
    - c. Any special health or nutrition problems of the children assigned to the caregiver staff member;
    - d. Any special needs of the children assigned to the caregiver staff member;
    - e. The planned program of activities at the child care center;
    - f. Rules and policies of the child care center; and
    - g. Child abuse and neglect reporting laws;: and

3. ~~Caregivers under the age of eighteen and all~~ Ensure safe care for children in care shall have adult under supervision in the child care center at all times. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of an infant, toddler, or preschooler at all times so the staff member is capable of intervening to protect the health and safety of the child. For the school-age child, it means a staff member responsible for caring for or teaching children being available for assistance and care so that the child's health and safety is protected.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-10-13. Minimum health requirements for all caregivers applicants, operators, and staff members.**

1. ~~Each operator or caregiver shall complete a health self-certification form certifying that the operator or caregiver does not have health problems that would interfere with the person's functioning as a caregiver or that would be detrimental to the health of the children or other staff. If the operator adds or replaces a caregiver after the licensure process is complete, the operator shall submit a self-certification form completed by the new caregiver to the county agency within five working days of the caregiver's first workday.~~
2. ~~Each operator or caregiver shall furnish documentation of a negative Mantoux tuberculosis test prior to initial licensure or employment, and every two years thereafter. If the operator adds or replaces a caregiver after the licensure process is complete, the caregiver shall furnish documentation of a negative Mantoux tuberculosis test before the first day of employment. Substitute staff are exempt from this requirement. A child care center operator who uses an untested emergency designee may not be found in violation of this provision.~~
3. ~~If the physical or mental, cognitive, social, or emotional health capabilities of an applicant, operator, or caregiver staff member appears questionable, the department may require the individual to be evaluated by appropriate professionals, with the results provided to the department present evidence of the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for the costs of any required evaluation.~~



4. 2. ~~While children are in care, A staff members member~~ may not use or be under the influence of any ~~alcohol or judgment-altering illegal~~ drugs or alcoholic beverages while caring for children.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-10-14. Minimum qualifications for volunteers.** If a volunteer is providing child care, ~~volunteers the volunteer~~ shall meet the qualifications of child care caregivers a staff member responsible for caring for or teaching children and shall receive orientation ~~as needed~~ for all assigned tasks.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-10-15. Minimum standards for provision of transportation.**

1. The operator shall establish a written policy governing the transportation of children to and from the child care center, if the child care center provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the child care center. If the child care center provides transportation, the operator shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.
2. When transportation is provided by a child care center, children must be protected by adequate staff member supervision, safety precautions, and liability ~~and medical~~ insurance.
  - a. ~~Child and staff ratios~~ Staffing requirements must be maintained to assure the safety of children while being transported. ~~The department requires one busdriver per twenty children and one additional individual for twenty-one children or more.~~
  - b. A child may not be left unattended in a vehicle.
3. Children must be instructed in safe transportation conduct as appropriate to their age and stage of development.

4. The driver must be eighteen years of age or older and shall comply with all relevant federal, state, and local laws, including child restraint system laws.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

#### **75-03-10-16. Minimum emergency evacuation and disaster plan.**

1. ~~Each child care center~~ The operator shall have an approved and posted establish and post an emergency disaster plan for the safety of the children in care. Written The operator shall develop written disaster plans must be developed in cooperation with the authorities: local emergency management agencies. The plan must include:
  - a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;
  - b. What will be done if parents are unable to pick up their child as a result of the emergency; and
  - c. What will be done if the child care center has to be relocated or must close as a result of the emergency.
2. Fire and emergency evacuation drills must be performed in accordance with the local fire department's state fire marshal's guidelines.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, ~~50-11.1-02, 50-11.1-02.1~~ 50-11.1-04, 50-11.1-08

#### **75-03-10-17. Fire inspections.**

1. ~~Annual~~ The operator shall ensure that annual fire inspections must be are completed by local or state fire authorities. The operator shall correct or have corrected any code violations noted by the fire inspector and shall file reports of the inspections and any corrections with the county licensing agency authorized agent.



2. ~~The operator shall ensure that the~~ child care center ~~must be~~ is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department or state fire marshal.
3. ~~The child care center~~ operator shall provide:
  - a. ~~The local~~ fire inspector's written statement of compliance with the local fire code, if there is one; or
  - b. ~~The local~~ fire inspector's written statement that the child care center has been inspected and that the inspector is satisfied that the child care center meets minimum fire and safety standards; or
  - c. ~~A written statement from an appropriate fire official that the child care center meets minimum fire and safety standards adopted by the state fire marshal.~~

**History:** Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-10-18. Minimum sanitation and safety requirements.**

1. ~~In centers where meals are prepared, The operator shall ensure that the state department of health shall conduct~~ conducts an annual inspection. ~~If only snacks or occasional cooking projects are prepared, a state department of health inspection is not required. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the authorized agent.~~
2. ~~Child~~ The operator shall ensure that the child care center bathroom ~~lavatories~~ sinks, toilets, tables, chairs, and floors ~~must be~~ are cleaned daily. Cots and mats must be designated individually labeled, and cleaned and sanitized at least weekly. If different children use the same cots or mats, they must be thoroughly cleaned thoroughly and sanitized between each use. ~~Separate~~ The operator shall provide separate storage ~~must be provided~~ for personal blankets or coverings.
3. The operator shall ensure that the child care center's building, grounds, and equipment ~~must be~~ are located, cleaned, and maintained to protect the health and safety of children. ~~Routine~~ The operator shall establish routine maintenance and cleaning procedures ~~must be established~~ to protect the health of the children and the ~~caregivers~~ staff members.
4. ~~Garegivers~~ Staff members and children shall wash their hands, according to recommendations by the federal centers for disease

control and prevention, before preparing or serving meals, after nose wiping, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and sanitary hand-drying equipment, single-use cloth towels, or paper towels must be available at each lavatory sink.

5. ~~Indoor~~ The operator shall ensure that indoor and outdoor equipment, toys, and supplies must be are safe, strong, nontoxic, and in good repair. All The operator shall ensure that all toys must be easily cleanable and must be cleaned and sanitized on a routine basis and equipment are kept clean and in sanitary condition. Books and other toys are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
6. The operator shall ensure that the child care center ground areas must be are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
7. ~~Garbage must be~~ The operator shall ensure that the garbage stored outside is kept away from areas used by children and is kept in containers with tight lids, made of noncombustible materials. Open burning is not permitted. The operator shall keep indoor garbage in covered containers. The operator may allow paper waste to be kept in open waste containers.
8. ~~Exterior~~ The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas must be are contained; or fenced, or have natural barriers to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
9. ~~Potential~~ The operator shall ensure that potential hazards, including such as noncovered electrical outlets, guns, household cleaning chemicals, uninsulated wires, medicines, and poisonous plants, and open stairways may are not be accessible to young children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
10. ~~Indoor~~ The operator shall ensure that indoor floors and steps may are not be slippery or and do not have splinters. Steps The operator shall ensure that steps and walkways must be are kept free from accumulations of water, ice, snow, or debris.
11. ~~Elevated~~ The operator shall ensure that elevated areas, such as including stairs or and porches, must have railings and approved safety gates where necessary to prevent falls.



12. ~~Child care centers~~ The operator shall take steps to keep the facility child care center free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the facility child care center. Insect repellent may be applied outdoors on children with written parental permission.
13. ~~Exit~~ The operator shall ensure that exit doorways and pathways may are not be blocked.
14. If the center is providing care to children in wheelchairs, the center operator shall ensure doors have sufficient width and construction to accommodate any children in wheelchairs who are receiving care at the child care center.
15. ~~Light~~ The operator shall ensure that light bulbs in areas used by children must be are properly shielded or shatterproof.
16. ~~Combustible~~ The operator shall ensure that combustible materials must be are kept away from light bulbs and other heat sources.
17. ~~There must be~~ The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by the local fire authorities. During the heating season when the child care center is occupied by children, the room temperature may not be less than ~~sixty-eight~~ sixty-five degrees Fahrenheit [~~20~~ 18 degrees Celsius] and not more than ~~seventy-four~~ seventy-five degrees Fahrenheit [~~23.33~~ 24 degrees Celsius] ~~measured three feet [91.44 centimeters] above the floor. All heating devices must be approved by the local fire authorities.~~
18. ~~All~~ The operator shall ensure that all child care center buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be present, ~~must have these painted surfaces repainted or must~~ shall submit evidence that the ~~surfaces~~ paints or finishes do not contain hazardous levels of lead-bearing substances. For purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the state department of health.
19. ~~Personal~~ The operator shall ensure that personal items including combs, pacifiers, and toothbrushes ~~must be are~~ individually identified and stored in a sanitary manner.

20. ~~All pets present in the child care center must be properly immunized, restricted, and maintained. Nondomestic animals such as skunks, opossum, or raccoon, whether or not regarded as pets, may not be present in the child care center. Pets may not be allowed in the kitchen or eating area during meal preparation or meals and animals.~~
- a. The operator shall ensure that only cats, dogs, and small pets that are contained in an aquarium or other approved enclosed container are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children.
  - b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
  - c. The operator shall ensure parents are aware of the presence of pets and animals in the child care center.
  - d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.
  - e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
  - f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
  - g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.
  - h. The operator shall ensure that the child care center is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
21. ~~Wading Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the child care center must be strictly supervised and must be emptied and cleaned shall empty, clean, and sanitize wading pools daily.~~



22. All swimming pools used by children must be approved annually by the local health unit.
23. ~~Smoking is not permitted in any child care center at any time during which a child who receives early childhood services from that child care center is present and receiving services.~~
24. ~~Diapering:~~
- ~~a. There must be a designated cleanable diapering area in the child care center if children requiring diapering are in care. A handwashing lavatory must be immediately accessible to the diapering area.~~
  - ~~b. Cloth diapers may not be used in a child care center.~~
  - ~~c. Diapers must be changed promptly when needed and in a sanitary manner. Infants must be changed on a cleanable surface which must be thoroughly cleaned with detergent and sanitized after each diapering.~~
  - ~~d. Soiled or wet disposable diapers must be stored in a sanitary, airtight container until removed from the child care center.~~
25. Water supply standards:
- a. The operator shall ensure that the child care center ~~shall have~~ has a drinking supply from an approved community water system or from a source tested and approved annually by the state department of health.
  - b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual, single-serve drinking cups.
  - c. The child care center must have hot and cold running water. ~~Hot water heaters must be turned down or there must be a tempering valve or antiscalding device on~~ The water in the faucets used by children ~~so that the temperature of hot water supplied to lavatories and bathing facilities does~~ may not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].
26. 24. Toilet and ~~lavatory~~ sink facilities:
- a. ~~Toilet~~ The operator shall provide toilet and lavatory sink facilities must be provided and must be convenient which are easily accessible to the areas used by the children and staff members.

- b. ~~Toilet and lavatory facilities must meet requirements of the state department of health.~~
- e. Toilets must be located in rooms separated from those used for cooking, eating, and sleeping. A minimum of one ~~lavatory sink~~ and one flush toilet must be provided for each fifteen children, excluding those children who are not toilet trained.
- d. ~~c.~~ Separate ~~The operator shall ensure that separate~~ restrooms must be ~~are~~ provided for boys and girls six years of age and over, and partitions ~~must be~~ are installed to separate toilets in these restrooms.
- e. ~~d.~~ Child-sized ~~The operator shall provide child-sized~~ toilet adapters, training chairs, or potty chairs ~~must be provided for use by children who require them. Training chairs must be emptied promptly and thoroughly cleaned and sanitized after each use.~~
- f. ~~e.~~ At ~~The operator shall provide at least one handwashing lavatory must be provided sink per toilet room facility or diapering area. Sanitary~~ The operator shall ensure that sanitary hand-drying equipment, single-use cloth towels, or paper towels ~~must be provided are available near handwashing lavatories sinks.~~
- g. ~~f.~~ Safe ~~The operator shall provide safe~~ step stools ~~must be provided to allow children to use standard-size toilets and lavatories to be used by the children sinks or the operator shall ensure the availability of child-size toilets and lavatories must be provided sinks.~~

~~27.~~ 25. ~~Sewage and wastewater disposal:~~

- a. ~~A child care center shall meet the requirements of the state plumbing code as contained in North Dakota Administrative Code article 62-03.~~
- b. ~~Any~~ The operator of a child care center not on a municipal or public water supply or wastewater disposal system shall ensure the child care center's sewage and wastewater system has been approved by the state department of health.

~~28.~~ 26. ~~Laundry:~~

- a. If the child care center provides laundry service for common use linens, towels, or blankets, it shall have adequate space and equipment for safe and effective operation.



- b. ~~Soiled~~ The operator shall ensure that soiled linens ~~must be~~ are placed in closed containers or hampers during storage and transportation.
- c. ~~In~~ The operator shall ensure that in all new or extensively remodeled child care centers, the handling, sorting, or washing of soiled ~~linen~~ linens or blankets ~~must take~~ takes place in a designated area that is separated by a permanent partition from food preparation, serving, and kitchen areas.
- d. ~~In~~ The operator shall ensure that in an existing child care centers center where physical separation of laundry and kitchen areas is impractical, procedures ~~must be~~ are developed that prohibit the washing or transportation of laundry while meals are being prepared or served.
- e. ~~Sorting~~ The operator shall ensure that sorting of laundry may ~~is~~ not be allowed in food preparation, serving, or kitchen areas.
- f. If the child care center provides laundry service for common use linens, towels, or blankets, or if different children's clothing, towels, or blankets are laundered together, the operator shall ensure that water temperature must be greater than one hundred ~~seventy~~ forty degrees Fahrenheit [~~77.2~~ 60 degrees Celsius].
- 9. ~~If~~ The operator shall ensure that if the water temperature is less than one hundred ~~seventy~~ forty degrees Fahrenheit [~~77.2~~ 60 degrees Celsius], ~~then bleach must be or sanitizer is used~~ in the laundry process during the rinse cycle to achieve fifty parts per million of available hypochlorite at or the center shall use a clothes dryer that reaches a temperature of at least ~~seventy-five~~ one hundred forty degrees Fahrenheit [~~24~~ 60 degrees Celsius].

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, ~~50-11.1-02.2,~~ 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-10-19. Minimum requirements regarding space and lighting.**

- 1. Each ~~child care center~~ operator shall provide adequate indoor and outdoor space for the daily activities of all children ~~in attendance~~ within the licensed capacity of the child care center.
- 2. ~~The child care center shall provide adequate space, indoors and out, for the daily activities of the children. This Adequate space must~~

include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space children are not permitted to occupy. If available outdoor play space does not accommodate the licensed capacity of the child care center at one time, the total appropriate outdoor play space available must not be less than what is required for the number of children in the largest class or group of the center multiplied by seventy-five square feet [6.97 square meters]. The child care center operator shall prepare a written schedule of outdoor playtime which limits use of the play area to its capacity, giving every child an opportunity to play outdoors daily.

3. The child care center must be properly lighted. ~~The following technical requirements must be met:~~
  - ~~a. Sixty-five foot-candles of light for all general use and play areas;~~
  - ~~b. Twenty-five foot-candles of light for all bathrooms;~~
  - ~~c. Fifty foot-candles of light for any kitchen, laundry, and office facilities; and~~
  - ~~d. Fifteen foot-candles of light for corridors and storage areas;~~
  - e. If the lighting of the child care center appears questionable, the department may require the operator to obtain additional lights so that a minimum of sixty-five foot-candles of light is used in the areas generally used for children's activities.

**History:** Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-10-20. Program requirements.**

1. The child care center operator shall have a program of daily individual or small group activities appropriate to the ages and needs of the children in the child care center. The program must include activities which foster sound social, intellectual cognitive, emotional, and physical growth, and the program must be developed with discussion and consultation with parents as to their children's needs consideration of parental input. A written daily routine including mealtimes, rest times, planned developmentally appropriate activities, free play, and outside



time must be available to parents. The daily routine must be flexible enough to allow for spontaneous activity as appropriate.

2. The program must be flexible and subject to modification for individual child differences.
3. The program must be written and varied ~~in order~~ to promote the physical and emotional well-being of the children, to encourage the acquisition of information and knowledge, and to foster the development of language skills, concepts, self-discipline, and problem-solving activities. The program must describe how the activities planned meet the children's developmental needs, including the special needs of children ~~in the child care center who are multilingual or disabled~~. The written program must be made available to parents.
4. The program must include firsthand experiences for children to learn about the world in which they live. ~~Opportunities must be provided for older children to participate in supervised visits and recreational activities in the community.~~
5. Learning experiences must be conducted in consultation with parents ~~in order~~ to ensure harmony with the lifestyle and cultural background of the children.
6. The program must provide a balance of quiet and active indoor and outdoor group and individual activities. A time for supervised child-initiated and self-selected activity must be established.
7. If children are allowed to assist in any food preparation, the activity must be limited to use of equipment and appliances that do not present a safety hazard. Children may not be allowed in the kitchen or laundry area unsupervised.
8. A variety of games, toys, books, crafts, and other activities and materials must be provided to enhance the child's intellectual and social development and to broaden the child's life experience. Each child care center ~~shall~~ must have enough play materials and equipment so, that at any one time, each child in attendance may be ~~individually~~ involved individually or as a group.
9. The cultural diversity of the children must be reflected in the program through incorporation of their language, food, celebration, and lifestyles, if appropriate.
10. Equipment and furniture must be durable and safe and must be appropriately adapted for children's use.
11. Sufficient space accessible to children must be provided for each child's personal belongings.

12. The child care center shall supplement, augment, and reinforce the child's activities at home, and, where applicable, at school.
13. At the time of enrollment, the ~~child care center staff~~ director or supervisor shall discuss with the parents the children's habits, activities, and schedules while at home and in school and ~~their~~ the parents' special concerns about their past and future behavior and development. The schedule and activities must be designed to complement and supplement the children's experiences at home and in school.
14. Staff members responsible for caring for or teaching children shall encourage parents to visit the facility, observe, and participate in the care of their children.
15. The ~~child care center~~ director or supervisor shall contact parents to ~~exchange information concerning the child and the child care program as well as to~~ offer meaningful opportunities to participate in general program policymaking.
16. ~~Personal~~ The child care center shall stress personal hygiene practices appropriate for a child's age and development ~~must be stressed~~.
17. The ~~child care~~ director or supervisor shall contact parents to exchange information concerning the child and any concerns about the health, development, or behavior of the child. These concerns must be communicated to the parent promptly and directly.
18. Each child's cultural and ethnic background and primary language or dialect must be respected by the ~~caregivers~~ staff members.
19. Each child care center shall have a designated area where a child can sit quietly or lie down to rest. There must be sufficient cots or sleeping mats ~~so that to allow~~ each child in attendance may have an individual napping space. The floor may be used only when the floor is carpeted or padded, warm, and free from drafts, and when individual blankets or coverings are used. ~~Napping~~ The child care center shall set napping schedules must be set for children according to ~~their~~ the children's ages and needs. For children unable to sleep, the director or supervisor shall provide time and space for quiet play ~~must be available~~.

**History:** Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

#### **75-03-10-21. Minimum standards for food and nutrition.**



1. When the operator is responsible for providing food to children, the food supplied must meet United States department of agriculture standards and must be properly prepared, sufficient in amount, nutritious, varied according to diets of the children enrolled, and served at appropriate hours. Food that is prepared, served, or stored in a child care center must be treated in a sanitary and safe manner with sanitary and safe equipment.
2. When parents bring sack lunches for their children, the operator may supplement lunches, as necessary, to provide nutritious and sufficient amounts of food for children, and shall provide adequate and appropriate refrigeration and storage as required.
3. ~~If the services are available free of charge, a dietitian or other food service professional must be used as a consultant.~~
4. ~~Children must be served a nutritious morning and afternoon snack and, if the parent does not provide a sack lunch, a nourishing meal.~~
  - a. Children in care for more than three hours shall receive either a snack or meal, whichever is appropriate to that time of the day.
- b. 4. ~~Children~~ The operator shall serve nutritious meals to children in care during any normal mealtime hour ~~must be served food appropriate to that time of the day.~~
- e. 5. ~~Children~~ The operator shall serve snacks to children in care in afterschool child care center programs ~~who have not had any food since lunch must be provided with a snack.~~
5. 6. When the operator is responsible for providing food to children, menus must be prepared on a weekly or daily basis and made available to the parents, the ~~department~~ authorized agent, ~~or and~~ other appropriate individuals.
6. 7. ~~Information~~ The operator shall consider information provided by the children's parents as to ~~their~~ the children's eating habits, food preferences, or special needs ~~must be considered~~ in creating the feeding schedules and in the tailoring of menus.
7. 8. ~~Children must be served~~ The operator shall serve snacks and meals to children in a manner commensurate with their age, using appropriate foods, portions, dishes, and eating utensils.

- 8- 9. ~~Children~~ The operator or staff member may be encouraged encourage children to eat the food served, but the operator or staff member may not be subjected to coercion or force-feeding coerce or force-feed children.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-07, 50-11.1-08

#### **75-03-10-22. Records.**

1. The operator shall keep a copy of this chapter on the premises of the child care center and shall make it available to staff members at all times.
2. The child-care-center operator shall maintain the following records:
  - a. The child's full name, birth date, and current home address;
  - b. ~~Names~~ Legal names of the child's parents ~~or legal guardian~~, and the business and home ~~personal~~ telephone numbers where these individuals ~~may~~ they can be reached;
  - c. Names and telephone numbers of individuals who may assume responsibility for the child if the individuals legally responsible for the child ~~may not~~ cannot be reached immediately in an emergency;
  - d. A written statement from the parents ~~or legal guardian~~ authorizing emergency medical care;
  - e. Names and telephone numbers of individuals authorized to take the child from the child care center;
  - f. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, or have on file a document stating that the child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs, unless the child is a drop-in or school-aged school-age child; and
  - g. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child, ~~that which~~ must indicate any special precautions for diet, medication, or activity, ~~must serve as evidence that a child is physically able to take part in the child-care program, and must be completed annually.~~ This assessment must be completed annually.



3. The operator shall record and verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the operator considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
- 2- 4. All The operator shall ensure that all records, photographs, and information maintained with respect to children receiving child care services must be are kept confidential, and that access must be is limited to staff members, the parents, or legal guardian of each child, and to the following, unless otherwise protected by law:
  - a. ~~Authorized county agency~~ The authorized agent and department representatives;
  - b. Individuals having a definite interest in the well-being of the children concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
  - c. Individuals who possess a written authorization from the child's parent ~~or legal guardian~~. The child care center shall have a release of information form available and shall have the form signed prior to the release of information.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-10-23. Discipline - Punishment prohibited.** Disregard of any of the following disciplinary rules or any disciplinary measure resulting in physical or emotional injury, or neglect, or abuse, to any child is grounds for license denial or revocation:

1. The child care center must have a written policy regarding the discipline of children ~~that must be interpreted to.~~ The operator shall provide the policy to, and discuss the policy with, the staff members responsible for caring for or teaching children before the child care center begins operation or before staff members begin working with children.
2. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, ~~praise for~~ praising appropriate behavior, ~~and or~~ gentle physical restraint, such as holding. ~~Children~~ A child may not be subjected to physical harm, fear, or humiliation.

3. Authority to discipline may not be delegated to ~~or children nor may discipline be accomplished administered~~ by children.
4. Separation, when used as discipline, must be brief and appropriate to the child's age development and circumstances. ~~Any~~ The child must be in a safe, lighted, well-ventilated room within sight or hearing range of an adult staff member responsible for caring for or teaching children. A ~~child staff member~~ may not be ~~isolated~~ isolate a child in a locked room or closet.
5. A child may not be ~~physically~~ punished for lapses in toilet training.
6. ~~When addressing a child, or while in the presence of a child, staff members may not~~ A staff member may not use verbal abuse or make derogatory remarks about the a child, the or a child's family, race, or religion, nor use profane, threatening, unduly loud, or otherwise abusive language when addressing the child or in the presence of a child.
7. A staff member may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
8. A child staff member may not be force-fed force-feed a child or coerce a child to eat, unless medically prescribed and administered under a physician's medical provider's care.
- 8- 9. ~~Deprivation~~ A staff member may not use deprivation of meals may not be used or snacks as a form of discipline or punishment.
- 9- 10. ~~A child may not be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by any staff member or any other adult in the child care center staff member or any other adult in or at the child care center may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child.~~
11. A staff member may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in a child's mouth to deter the child from biting other children.
12. A staff member may not withhold active play from a child as a form of discipline or punishment, beyond a brief period of separation.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08



**75-03-10-24. Specialized types of care and minimum requirements therefor.**

1. Infant care.

a. Environment and interactions.

(1) A child care center serving children from birth to ~~twenty-four~~ twelve months shall provide an environment which protects the children from physical harm ~~and is not so restricted so as to inhibit physical, intellectual, emotional, and social development.~~

(2) The operator shall ensure that each infant receives positive stimulation and verbal interaction with a staff member responsible for caring for or teaching children or emergency designee such as the staff member or emergency designee holding, rocking, talking with, or singing to the child.

(3) A staff member shall respond promptly to comfort an infant's or toddler's physical and emotional distress:

(a) Especially when indicated by crying or due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness; and

(b) Through positive actions such as feeding, diapering, holding, touching, smiling, talking, singing, or eye contact.

b. (4) ~~Nonwalking children shall have the opportunity~~ The operator shall ensure that infants have frequent and extended opportunities during each day for freedom of movement, including creeping or crawling in a safe, clean, open, uncluttered area.

c. ~~Each infant shall have an individual sleeping space. The sheets must be changed whenever they become soiled or wet. If individual protective coverings are used for each child to protect linens, the protective coverings must be laundered at least weekly.~~

d. ~~Any child under twelve months of age or unable to walk unassisted must be provided sleeping space in a crib with a firm mattress or a playpen with adequate padding.~~

e. (5) ~~Children~~ Staff members responsible for caring for or teaching children must be taken take children outdoors or to other areas within the child care center for a part of each day to provide children with some change of physical surroundings

~~and to allow them to be with other children. A child may not be confined to a crib or playpen during the entire time at the child care center, unless the child is preparing to sleep or sleeping for the duration of the care.~~

- ~~f. Each infant shall have periodic individual personal contact and attention from an adult, such as being held, rocked, talked to, or sung to.~~

(6) When a child is awake, staff members may not confine the child to a crib, portable crib, or other equipment for longer than twenty minutes, taking into consideration the child's emotional state.

- ~~g. (7) Low The operator shall ensure that low chairs and tables or infant seats high chairs with trays must be provided for table play and mealtime for children infants no longer being held for feeding. Highchairs High chairs, if used, must have a wide base and a safety strap.~~

- ~~h. (8) Children may not be The operator shall ensure that infants are not shaken or jostled.~~

- ~~i. All cries of infants must be investigated.~~

- ~~j. Infants must be fed or supervised individually and the diet and pattern of feeding must be appropriate to the individual developmental needs and parent's wishes.~~

(9) The operator shall ensure that thermometers, pacifiers, teething toys, and similar objects are cleaned and sanitized between uses. Pacifiers may not be shared.

b. Feeding.

- ~~k. (1) Infants must be The operator shall ensure that infants are provided age-appropriate developmentally appropriate nutritious foods. Only breast milk or iron-fortified artificial milk, meeting the requirements of the Infant Formula Act of 1980 [Pub. L. 96-359; 94 Stat. 1190; 21 U.S.C. 301 note et seq.], infant formula may be fed to infants less than six months of age, unless otherwise instructed in writing by the infant's parent or medical provider.~~

- ~~l. (2) Infants must be The operator shall ensure that infants are fed only the specific brand of artificial baby milk iron-fortified infant formula requested by the parent. Staff members shall use brand-specific mixing instructions unless alternative~~



mixing instructions, ~~based upon directions of~~ are directed by  
a child's physician, ~~are provided~~ medical provider.

m. (3) ~~Mixed formula, in single bottles or batches,~~ The operator shall ensure that mixed formula that has been unrefrigerated more than one hour, must be is discarded.

n. (4) ~~Frozen~~ The operator shall ensure that frozen breast milk must be is thawed under cool running tap water, or in the refrigerator in amounts needed. Unused, thawed breast milk must be discarded or given to the parent at the end of each day.

~~o. Staff members shall hold infants when bottle-feeding breast milk, artificial baby milk, soy or cow's milk based ready-to-feed, concentrate, powdered prepared formulas or cow or goat milk.~~

~~p. Infants, determined by the parent to be developmentally ready for foods other than breast milk or artificial baby milk, shall have those other foods offered from a spoon only.~~

~~q. Staff members may not leave an infant unattended during the infant's feeding or eating process.~~

~~f. There must be a minimum space of two feet [58.42 centimeters] between each crib or cot. Aisles between cots and cribs must be kept free of all obstructions while they are occupied.~~

(5) The operator shall ensure that an infant is not fed by propping the bottle.

(6) The operator shall ensure that cereal and other nonliquids or suspensions are only fed to an infant through a bottle on the written orders of the child's medical provider.

(7) The operator shall ensure that staff members responsible for caring for or teaching children, emergency designee, or substitute staff are within sight and hearing range of an infant during the infant's feeding or eating process.

c. Diapering.

(1) The operator shall ensure that there is a designated cleanable diapering station, located separately from food preparation and serving areas in the child care center if children requiring diapering are in care.

- (2) The operator shall ensure that diapers are changed promptly and in a sanitary manner when soiled or wet.
- (3) Diapers must be changed on a nonporous surface area which must be cleaned and disinfected after each diapering.
- (4) The operator shall ensure that soiled or wet diapers are stored in a sanitary, covered container, separate from other garbage and waste until removed from the child care center.

d. Sleeping.

- (1) The operator shall ensure that infants are placed on their back when sleeping to lower the risk of sudden infant death syndrome, unless the infant's parent has provided a note from the infant's medical provider specifying otherwise. The infant's face must remain uncovered when sleeping.
- (2) The operator shall ensure that infants sleep in a crib with a firm mattress or in a portable crib with the manufacturer's pad that meets consumer product safety commission standards.
- (3) The operator shall ensure that if an infant falls asleep while not in a crib or portable crib, the infant must be moved immediately to a crib or portable crib.
- (4) Water beds, adult beds, sofas, pillows, soft mattresses, and other soft surfaces are prohibited as infant sleeping surfaces.
- (5) The operator shall ensure that all items are removed from the crib or portable crib, except for one infant blanket and security item that does not pose a risk of suffocation to the infant. The infant's face must remain uncovered when sleeping.
- (6) The operator shall ensure that mattresses and sheets are tightly fitted. The operator shall ensure that sheets and mattress pads are changed whenever they become soiled or wet, when used by different infants, or at least weekly.
- (7) The operator shall ensure that each infant has an individual infant blanket.
- (8) The operator shall ensure that toys or objects hung over an infant crib or portable crib are secured and are of size and weight that would not injure an infant if the toy or object accidentally falls or if the infant pulls on the object.
- (9) The operator shall ensure that a staff member responsible for caring for or teaching children checks on sleeping infants



every fifteen minutes or that a monitor is in the room with the infants.

- e. The operator shall ensure that parents of each infant receive a written daily report detailing the infant's sleeping and eating processes for the day, and the infant's diapering schedule for the day.

2. Night care.

- a. Any child care center offering night care shall provide program modifications for the ~~special~~ needs of children and their parents during the night.
- b. In consultation with parents, ~~special~~ attention must be given by the ~~caregiver~~ staff member responsible for caring for or teaching children to provide a transition into this type of care appropriate to the child's ~~emotional~~ needs.
- c. ~~When practical, The operator shall encourage parents to leave their children must be left for in care and picked pick them up before and after their normal sleeping period when practical, to ensure minimal disturbance of the child during sleep, but with consideration must be given to the parent's work schedule.~~
- d. ~~Preschool age children must be~~ The operator shall ensure that children under the age of six are supervised when bathing.
- e. ~~Comfortable~~ The operator shall ensure that comfortable beds, cots, or cribs, complete with a mattress or pad, must be are available: and shall ensure:
  - (1) Pillows and mattresses ~~must~~ have clean coverings;
  - (2) Sheets and pillowcases ~~must be are~~ changed as often as necessary for cleanliness and hygiene, ~~but~~ at least weekly. If beds are used by different children, sheets and pillowcases ~~must be are~~ laundered before use by other children; and
  - (3) Each bed or cot ~~must have~~ has sufficient blankets available.
- f. ~~The child care center~~ operator shall require each child in night care to have night clothing and a toothbrush marked for identification.
- g. ~~For child care centers,~~ The operator shall ensure that during sleeping hours, the staff must be members are awake and within listening distance in order hearing range to provide for the needs of children and to respond to an emergency.

3. Drop-in child care centers.

- a. If a child care center serves drop-in children, schoolchildren, or before-school and afterschool children, the child care center must be sufficiently staffed to effectively handle admission records and explain the policies and procedures of the program and to maintain the proper staff member to child ratio.
- b. The operator shall ensure that the program must reflect reflects the special individual needs of the children who are provided drop-in service care.
- c. ~~Admission~~ The operator shall ensure that admission records must comply with all enrollment requirements contained in section 75-03-10-22, except the immunization verification record requirement.
- d. ~~Admittance~~ The operator shall ensure that admittance procedures must provide for a period of individual attention for the child ~~in order~~ to acquaint the child with the child care center, its equipment, and the staff members.
- e. A child care center may not receive drop-in care or part-time children who, when added to the children in regular attendance, cause the child care center to exceed the total number of children for which the child care center is licensed.

4. An operator shall ensure that a child care center serving only drop-in care children complies with this chapter, but is exempt from the following provisions:

- a. Subsections 12, 14, and 15 of section 75-03-10-20, subdivision f of subsection 2 of section 75-03-10-22, and subsection 1 of section 75-03-10-25; and
- b. A child care center serving only drop-in care children is exempt from the outdoor space requirements.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-10-25. Minimum requirements for care of ~~children~~ a child with special needs.** ~~When~~ An operator shall make appropriate accommodations, as required by the Americans with Disabilities Act, to meet the needs of children with special needs ~~are admitted to a child care center, there must be appropriate~~



~~provisions to meet those needs. The child care center shall document how receive documentation of the child's special needs may be met from the parent upon the child's enrollment.~~

1. ~~When children~~ a child with special needs ~~are is~~ admitted, the ~~child-care center director or supervisor~~ shall consult with the child's parents, and, with the parent's permission, the child's source of professional health care, or, when appropriate, other health and professional consultants to gain an understanding of the child's individual needs. The operator shall receive a written health care plan from the child's medical provider or parent with information related to the child's special needs, such as a description, definition of the diagnosis, and general information for emergency and required care such as usual medications and procedures.
2. ~~Caregivers~~ The operator shall ensure staff members responsible for caring for or teaching children receive proper instructions as to the nature of the child's ~~disability~~ special needs and potential for growth and development.
3. ~~If the nature of the special needs or the number of children with special needs warrants added care, the child care center shall add sufficient staff and equipment as deemed necessary by the department to compensate for these needs.~~

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-10-26. Minimum provisions regarding emergency care for children.** The child care center shall have written plans to respond to illness and emergencies, including burns, serious injury, and ingestion of poison. ~~Parents~~ The operator shall ensure that parents of enrollees must be are advised of these plans. Plans must provide that:

1. ~~Emergency~~ Establish emergency response procedures:
2. Provide accessible posting of emergency response procedures be conspicuously posted and require training for all staff members concerning those emergency procedures;
2. ~~Training concerning emergency procedures be available for all staff members to ensure awareness of the hazards of infection and accidents and how such problems may be minimized;~~
3. ~~At~~ Require the availability of at least one working flashlight;

4. ~~Require at least one state department of health-approved~~ department-approved first-aid kit be maintained and kept in a designated location, inaccessible to children, yet readily accessible to staff members at all times;
4. 5. ~~The child care center have~~ Provide a working telephone line immediately accessible to staff members with a list of emergency telephone numbers conspicuously posted ~~adjacent to the telephone~~;
5. 6. ~~Medical consultation be available regarding special care and medication when health policies of the facility allow ill children to be admitted or to remain in the child care center;~~ Require a plan for responding to minor illnesses and minor accidents when children are in the care of the child care center;
6. 7. ~~Written~~ Require written permission to dispense medication ~~be and proper instructions for the administration of medication~~ obtained from the parent if of a child in the child care center who requires medication; ~~as well as proper instructions for the administration of medication~~;
- a. ~~Medications~~ Medication prescribed by a ~~physician~~ medical provider must be accompanied by the ~~doctor's~~ medical provider's written instructions as to dosage and storage, and labeled with the child's name and dated date;
- b. ~~Medications~~ Medication must be stored in an area inaccessible to children, and ~~medications~~ medication stored in a refrigerator must be stored collectively in a spillproof container;
- c. ~~A~~ The operator shall keep a written record of the administration of medication, including over-the-counter medication, to for each child ~~must be kept, and records.~~ Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child; and
- d. ~~Completed~~ The operator shall include completed medication records ~~must be included~~ in the child's record;
7. 8. ~~A~~ Require a supervised temporary isolation area ~~be provided~~ designated for a child who is too ill to remain in the ~~group~~ child care center or who has an infectious or contagious disease, with the following procedures being followed when those signs or symptoms are observed:
- a. Parents are notified immediately and asked to pick up their child; and
- b. First aid is provided and medical care is sought as necessary;



- 8- 9. ~~Children with infectious or communicable conditions be excluded from the child care center until the condition may no longer be transmitted, and guidance regarding exclusion and return to the child care center is obtained through consultation with local and state health department authorities; Establish and implement practices in accordance with guidance obtained through consultation with local or state department of health authorities implemented regarding the exclusion and return of children with infectious or communicable conditions. The program may obtain this guidance directly or through current published materials regarding exclusion and return to the child care center;~~
- 9- ~~Adequate supervision be available for all children who are ill and remain at the center;~~
10. ~~A~~ Identify a source of emergency health services ~~be~~ readily available to the child care center, including:
- a. A prearranged plan for emergency medical care in which parents of enrollees are advised of the arrangement; and
  - b. Provisions for emergency transportation, specifically that when a child is to be brought to another place for emergency care, ~~the child is to be accompanied by an adult who will~~ staff member responsible for caring for or teaching children shall remain with the child until medical personnel assume responsibility for the child's care and until the parent or legal guardian arrives is notified;
11. ~~Information~~ Require information be provided to parents, as needed, concerning child health and social services available in the community; ~~and that assistance be available for parents to obtain these services; and~~
12. The Require that the child care center inform parents in writing of any first aid administered to their child within twenty-four hours of the incident, ~~and~~ immediately notify parents of any injury which requires emergency care beyond first aid; ~~and~~
- 13- ~~Each~~ require each injury report to be made a part of the child's record.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-10-27. Effect of conviction on licensure and employment.**

1. ~~A child care center~~ An applicant, operator, director, or supervisor may not be, and a child care center may not employ or allow, in any capacity that involves or permits contact between the employee emergency designee, substitute staff member, or staff member and any child cared for by the child care center, an individual operator, emergency designee, substitute staff member, director, supervisor, or staff member who has been found guilty of, pled guilty to, or pled no contest to:
  - a. An offense described in North Dakota Century Code ~~chapters~~ chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - ~~harassment~~; ~~or~~ 12.1-18, kidnapping; or 12.1-27.2, sexual performances by children; or in North Dakota Century Code sections section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; ~~or~~ 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; ~~North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections~~ 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; ~~or~~ 12.1-31-05, child procurement; ~~or an~~ 14-09-22, abuse or neglect of a child;
  - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes offenses identified in subdivision a; or
  - ~~b-~~ c. An offense other than an offense identified in subdivision a or b, if the department in the case of a child care center applicant, operator, director, or supervisor, or the ~~child care operator~~ in the case of ~~a child care center employee~~ an emergency designee, substitute staff, or staff member, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. ~~A child care center~~ The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the applicant's, operator's, emergency designee's, substitute staff member's, director's, supervisor's, or staff member's ability to serve the public as an operator, emergency designee, substitute staff member, director, supervisor, or staff member.
3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another



jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.

4. The operator shall establish written policies; and engage in practices that conform to those policies; to effectively implement this section before hiring any staff member.
3. ~~For the purposes of subdivision b of subsection 1, the department in the case of a child care center operator, or the child care center operator in the case of a child care center employee, shall treat completion of a period of five years after final discharge from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.~~
4. ~~The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing upon an individual's ability to serve the public in a capacity involving the provision of child care services.~~
5. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

**75-03-10-28. Child abuse and neglect determinations decisions.** If a probable cause determination or a decision that services are required An operator shall ensure safe care for the children receiving services in the child care center. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that any a child has been abused or neglected by a an applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, that individual decision has a direct

bearing on the applicant's or operator's ability to serve the public in a capacity involving the provisions of child care and the application or license may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that any child has been abused or neglected by the applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, the applicant or operator shall furnish information satisfactory to the department, from which the department may can determine the applicant's, operator's, director's, supervisor's, emergency designee's, substitute staff member's, or staff member's current ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability must be furnished to the child care center applicant or operator and to the regional director of the regional human service center or the regional director's designee for consideration and action on the center child care application or license. Each applicant, operator, director, supervisor, emergency designee, substitute staff member, and staff member shall complete a department-approved authorization for background check form no later than the first day of employment.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-10-29. Allowable time periods for correction of deficiencies**  
**Correction of violations.**

1. Deficiencies Within three business days of the receipt of the correction order, the operator shall notify the parents of each child receiving care at the child care center that a correction order has been issued. In addition to providing notice to the parent of each child, the operator shall post the correction order in a conspicuous location within the child care center until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
  - a. For a violation of section ~~75-03-10-09~~ 75-03-10-08, subsection ~~subsections 3 and 9~~ of section 75-03-10-18, and section 75-03-10-23, within twenty-four hours;
  - b. For a violation ~~or deficiency~~ requiring the hiring of a child care supervisor with those qualifications set forth in section ~~75-03-10-10~~ 75-03-10-11.1, or a child care center director with those qualifications set forth in section ~~75-03-10-11.1~~ 75-03-10-10, within sixty days;



- c. For a deficiency violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-10-17, within sixty days;
  - d. For a deficiency violation that requires substantial building remodeling, construction, or change, within sixty days; and
  - e. For all other deficiencies violations, within twenty days.
- 2- 3. All periods for correction begin on the date of receipt of the correction order by the licensee operator.
- 3- 4. The regional supervisor of early childhood ~~program licensing~~ services may grant an extension of additional time to correct deficiencies violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the licensee operator and a showing that the need for the extension is created by unforeseeable circumstances and the licensee operator has diligently pursued the correction of the deficiency violations.
- 4- 5. The operator shall furnish a written notice ~~of to the authorized agent upon completion of the correction order~~ required corrective action to the county agency. The correction order ~~is effective~~ remains in effect until the ~~county receives the notice~~ authorized agent confirms that the corrections have been made.
6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a child care center that has been issued a correction order. If, upon reinspection, the department or its authorized agent determines that the child care center has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the child care center. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
7. If a child care center receives more than one correction order in a single year, the operator may be referred by the department for consulting services to assist the operator in maintaining compliance and to avoid future corrective action.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, ~~50-11.1-04~~ 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

### **75-03-10-30. Fiscal sanctions.**

1. ~~A~~ The department shall assess a fiscal sanction of twenty-five dollars per day must be assessed for each violation of ~~subdivision i of subsection 2 of section 75-03-10-08; subsection 2 of section 75-03-10-09~~ 75-03-10-08; section 75-03-10-17; subsections 6, 9, and 13 of section 75-03-10-18; subsection 2 of section 75-03-10-19; section 75-03-10-23; and section 75-03-10-28, for each day that the operator has not verified correction after the allowable time for correction of ~~deficiencies~~ violations ends, ~~that the child care center has not verified correction.~~
2. ~~A~~ The department shall assess a fiscal sanction of fifteen dollars per day must be assessed for each violation of section ~~75-03-10-11.4~~ 75-03-10-10; section 75-03-10-15; subsections 2, 3, 4, 7, 8, 11, 19, and ~~subdivision f of subsection 26 e~~ subsection 24 of section 75-03-10-18; subsection 1 of section 75-03-10-19; subsections 3, 8, and 19 of section 75-03-10-20; and ~~subdivision a of subsection 1 of subsection 3 of section 75-03-10-24~~, for each day that the operator has not verified correction after the allowable time for correction of ~~deficiencies~~ violations ends, ~~that the child care center has not verified correction.~~
3. ~~A~~ The department shall assess a fiscal sanction of five dollars per day must be assessed for each violation of any other provision of this chapter, for each day that the operator has not verified correction after the allowable time for correction of ~~deficiencies~~ violations ends, ~~that the child care center has not verified correction.~~

**History:** Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, ~~50-11.1-04~~ 50-11.1-07.4, 50-11.1-08

**75-03-10-31. Appeals.** An applicant or ~~provider~~ operator may appeal a decision to deny or revoke a license by filing a written appeal with the department. The appeal must be postmarked or received by the department within ten calendar days of the applicant's or operator's receipt of written notice of such a the decision to deny or revoke the license. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC ~~50-11.1-07.2~~ 50-11.1-08, 50-11.1-10



## CHAPTER 75-03-11

**75-03-11-03. Definitions.** As The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Aide Assistant" means any individual other than a teacher or one who works directly with children in a preschool educational facility under the supervision of a teacher or a director.
2. "Caregiver" means any individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in a preschool educational facility under the guidance and supervision of the preschool educational facility operator. "Attendance" means the total number of children present at any one time at the facility.
3. "County agency" means the county social service board in the county where the preschool educational facility is located. "Child with special needs" means a child whose medical providers have determined that the child has or is at risk for chronic physical, developmental, behavioral, or emotional conditions.
4. "Department" means North Dakota department of human services.
5. "Director" means an individual responsible for supervising and organizing program activities in a preschool educational facility.
6. 5. "Emergency designee" means an individual designated by the facility operator to be a backup caregiver staff member for emergency assistance or to provide substitute care.
6. "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
7. "Facility operator" or "operator Operator" means the individual or group governing board who has the legal responsibility and the administrative authority for the operation of a preschool educational facility. The facility operator is the applicant for license or the licensee under this chapter.
8. "Parent" means an individual bearing the legal relationship of father or mother to a child enrolled in a preschool educational facility, including an individual who legally stands in place of a parent, such as a legal guardian or custodian.
9. "Preschool educational facility" or "facility" means a program licensed under this chapter and the provisions of North Dakota Century Code chapter 50-11.1, to provide early childhood services which serves a child no more than three hours per day, offers early childhood services, and follows a preschool curriculum and course of study designed

primarily to enhance the educational development of the children enrolled ~~in the facility and which serves no child for more than three hours per day.~~

10. ~~"Staff" or "staff member" means operator, substitute staff, volunteer, caregiver, or any other individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in the preschool educational facility.~~
11. ~~9. "Substitute staff" means paid or unpaid staff who work less than thirty-two hours per month, and are not regularly scheduled for work.~~
12. ~~10. "Teacher" means an individual with the responsibility of implementing program activities, either as the director or under the supervision of the director.~~
13. ~~11. "Volunteer" means an individual who visits or provides an unpaid service or visit, including a fireperson firefighter for fire safety week, a McGruff, or Santa Claus person practicum student, or a foster grandparent.~~

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02

#### **75-03-11-04. Effect of licensing and display of license.**

1. The issuance of a license to operate a preschool educational facility is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.
2. The current license must be displayed prominently in the premises to which it applies.
3. The license must specify the maximum number of children who for whom the preschool may be cared for by the preschool educational facility provide care. The preschool educational facility may at no time not admit a greater number of children than the license allows.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-03, 50-11.1-04

#### **75-03-11-05. Denial or revocation of license.**



1. ~~A~~ The department may deny or revoke a license ~~may be denied or revoked~~ under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-06.2, 50-11.1-09, and 50-11.1-10.
2. If an applicant or operator appeals an action to revoke a license is ~~appealed~~, the ~~licenseholder~~ operator may continue the operation of the preschool educational facility pending the final administrative determination or until the license expires, whichever occurs first; provided, however, that this subsection does not limit the actions the department may take pursuant to North Dakota Century Code ~~section~~ sections 50-11.1-07.8 and 50-11.1-12.
3. The department may revoke a license to operate a preschool ~~educational facility~~ without first issuing a correction order or simultaneously with a suspension if continued operation would jeopardize the health and safety of the children present or would violate North Dakota Century Code section 50-11.1-09.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09, 50-11.1-10

#### **75-03-11-06. Provisional license.**

1. The director of a regional human service center, ~~in the director's discretion;~~ or the director's designee, in consultation with the department, may issue a provisional license for the operation of a ~~newly opened preschool educational facility or for a previously licensed preschool educational facility~~ although the preschool educational facility applicant or operator fails to, or is unable to, comply with all applicable standards and rules of the department.
2. A provisional license must:
  - a. ~~Prominently state~~ State that the ~~preschool educational facility operator~~ has failed to comply with all applicable standards and rules of the department;
  - b. ~~State that the items of noncompliance are set forth on a document available, upon request made to the operator;~~
  - c. Expire at a set date, not to exceed six months from the date of issuance; and
  - d. Be exchanged for an unrestricted license, which bears ~~the same~~ an expiration date of one year from the date of issuance as of

the provisional license, ~~upon demonstrating~~ after the applicant or operator demonstrates compliance, satisfactory to the department, with all applicable standards and rules.

3. ~~A~~ The department may issue a provisional license ~~may be issued only to an applicant or operator who has waived, in writing:~~
  - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
  - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
4. Any provisional license issued must be accompanied by a written statement of violations signed by the ~~regional~~ director of the regional human service center or the ~~regional~~ director's designee and must be acknowledged in writing by the applicant or operator.
5. Subject to the exceptions contained in this section, a provisional license entitles the holder operator to all rights and privileges afforded the holder operator of an unrestricted license.
6. The department ~~shall~~ may not issue a provisional license if the ~~facility~~ preschool is not in compliance with section 75-03-11-17 or 75-03-11-18.
7. The operator shall ~~prominently~~ display prominently the provisional license and agreement.
8. The operator shall provide parents written notice that the ~~facility~~ preschool is operating on a provisional license and the basis for the provisional license.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-03, 50-11.1-04, 50-11.1-08

**75-03-11-06.1. Restricted license.** The department may issue a restricted license:

1. To restrict an individual's presence when children are in child care;
2. To restrict a pet or animal from areas accessible to children; or



3. When necessary to inform the parents that the operator is licensed, but is restricted to operating in certain rooms or floors or restricted from using specific outdoor space.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04

**75-03-11-07. Application for and nontransferability of preschool educational facility license.** ~~An application for a license must be submitted to the county agency in the county in which the facility is located.~~

1. An applicant shall submit an application for a license to the authorized agent. Application must be made in the form and manner prescribed by the department.
2. The A license issued under this chapter is nontransferable and valid only on for the premises indicated on the license. A new An application for a new license must be filed by a licensed facility upon change of operator or location.
3. The department may not issue more than one child care license per residence. A residence means real property that is typically used as a single family dwelling. This applies to new licenses issued on or after October 1, 2010. Existing operators will be exempt from this provision until October 1, 2015, after which time all operators will be subject to the requirements of this subsection.

**History:** Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

**75-03-11-08. Duties of preschool education facility operator.**

4. ~~The operator of a preschool educational facility is responsible to the department for compliance with the requirements set forth in the standards this chapter and North Dakota Century Code chapter 50-11.1. In meeting this responsibility, the~~ The operator shall ensure:
  1. Designate a qualified director, delegate appropriate duties to the director, and shall:
    - a. Establishment of the preschool educational facility program; Ensure that the preschool director or designated acting director is present at the preschool at least sixty percent of the time that the preschool is open; and

- b. Ensure that the individual designated as an acting director for an ongoing period of more than thirty days meets the qualifications of a preschool director;
- b. ~~2.~~ An application is made Apply for a license for each the preschool educational facility operated;
- c. ~~3.~~ Creation of an outline of a written plan and policies for the operation of each preschool educational facility; Possess knowledge or experience in management and interpersonal relations;
- d. ~~4.~~ Notification is provided to Notify the county agency authorized agent of any major changes in the operation or in the ownership or governing body of the preschool educational facility and of any, including staff member changes;
- e. ~~5.~~ Liability Ensure that liability insurance for against bodily injury and property damage for the preschool educational facility is carried;
- f. ~~6.~~ Formulation of Formulate written policies and procedures for the operations of the preschool relating to:
  - (1) ~~a.~~ Hiring practices and personnel policies for staff members;
  - (2) ~~b.~~ Methods for obtaining references and employment histories of staff members;
  - (3) ~~c.~~ Methods of conducting staff member performance evaluations; and
  - (4) ~~d.~~ Children's activities, care, and enrollment; and the responsibilities and rights of staff and parents; and
  - e. The responsibilities and rights of staff members and parents;
- g. ~~7.~~ Maintenance Maintain records of required enrollment, attendance, health, financial, and related other required records;
- h. ~~8.~~ Responsibility Be responsible for all preschool educational facility staff members, teachers, preschool assistants, substitute staff members, emergency designees, volunteers, or others who provide services in the facility and for notifying the department and county agency of any change of director preschool;
- i. ~~9.~~ The reporting of Report immediately, as a mandatory reporter, any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1 and development of a written policy for staff to handle this reporting section 50-25.1-03;



- j- ~~10.~~ ~~Maintenance of~~ Maintain necessary information to verify staff members' qualifications and to ensure safe care for the children in the preschool educational facility;
- k- ~~Designation of a qualified director;~~
- t- ~~11.~~ ~~That~~ Ensure preadmission visits for children and their parents are offered ~~in order that so~~ the preschool educational facility's preschool's program, fees, operating policies, and procedures can be viewed and discussed, including:
  - (1) ~~a.~~ a. An explanation of how accidents and illnesses may be ~~dealt with~~ handled; and
  - (2) ~~b.~~ b. ~~Methods~~ The methods of developmentally appropriate discipline and ~~developmentally appropriate~~ guidance techniques to be used; and
  - c. The process for reporting a complaint, a suspected licensing violation, and suspected child abuse or neglect;
- m- ~~12.~~ ~~That~~ Ensure that there are signed written agreements with the parents of each child which specify the fees to be paid, methods of payments, and policies regarding delinquency of fees;
- n- ~~13.~~ ~~That~~ Ensure the preschool educational facility is sufficiently staffed at all times to meet the child and staff member ratios for children in attendance and that no more children than the licensed capacity are served at any one time;
- o- ~~14.~~ ~~That~~ Ensure that written policies are established concerning the care and safeguarding of personal belongings brought to the preschool educational facility by enrollees children or others on their behalf;
- p- ~~15.~~ ~~Parents are provided, upon request, any~~ Provide parents, upon request, with progress reports on their children and provide unlimited ~~access and~~ opportunities for parents to observe their children while in care;
- q- ~~16.~~ ~~Parents are provided~~ Provide parents with the name of the preschool educational facility's operator, the director, teachers, preschool assistants, staff members, substitute staff members, and the emergency designee;
- r- ~~17.~~ ~~The development of and~~ Develop and ensure compliance with a written policy and procedure for accountability when a normally unaccompanied child fails to arrive for as expected at the program preschool;

- s- 18. ~~That there is at all times when children are receiving care, a~~ Ensure, whenever services are provided, that at least one staff member, substitute staff member, or emergency designee, is on duty who meets current certification requirements in basic cardiopulmonary resuscitation by that meets the requirements of the American heart association, American red cross, or other similar cardiopulmonary resuscitation training programs approved by the department and is certified or trained in a first-aid program approved by the department. Substitute staff are exempted from this requirement department-approved program to provide first aid; and
- t- ~~Carecheck information is made available to parents:~~
- 2- 19. ~~If the operator of the preschool educational facility is also the director, the operator shall also meet~~ Meet the qualifications of the director set forth in section 75-03-11-28: if the operator is also the director; and
- 3- 20. ~~The operator of a facility shall report~~ Report to the authorized agent within twenty-four hours to the county director or the county director's designee a:
- a. A death or serious accident or illness requiring hospitalization of a child while in the care of the facility preschool or attributable to care received in the facility: preschool;
  - b. An injury to any child which occurs while the child is in the care of the preschool which requires medical treatment;
  - c. Poisonings or errors in the administering of medication;
  - d. Closures or relocations due to emergencies; and
  - e. Fire that occurs or explosions that occur in or on the premises of the preschool.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-07.2, 50-11.1-08

**75-03-11-08.1. Minimum qualifications of a preschool educational facility director.**

1. ~~A preschool educational facility director shall be an adult of good mental and physical, cognitive, social, and emotional health, capable of and shall use mature judgment, and shall possess knowledge and experience in management and interpersonal relationships when making decisions impacting the quality of child care.~~



2. The director shall ~~meet~~ hold at least one of the following qualifications, in addition to those set out in subsection 1:
  - a. A bachelor's degree in the field of early childhood education with eight or more weeks of supervised student teaching experience in a preschool ~~educational facility~~ or similar setting;
  - b. A bachelor's degree with at least twenty-four quarter hours or sixteen semester hours in child development, child psychology, or ~~fields~~ directly related ~~thereto~~ fields, with at least six months of experience in a preschool ~~educational facility~~ or similar setting;
  - c. An associate degree in the field of early childhood development with at least six months of experience in a preschool ~~educational facility~~ or similar setting;
  - d. ~~Certification~~ Current certification as a child development associate or similar status ~~where such a local, state, or federal certification program exists~~, with at least one year of experience in a preschool ~~educational facility~~ or similar setting;
  - e. A bachelor's degree with at least eight semester hours or twelve quarter hours in child development, child psychology, or ~~fields~~ directly related ~~thereto~~ fields, with at least one year of experience in a preschool ~~educational facility~~ or similar setting; or
  - f. Certification from a Montessori teacher training program with at least one year of experience in a Montessori school, preschool ~~educational facility~~, or similar setting.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11-08.2. Minimum qualifications of a preschool educational facility teacher. A teacher shall:**

1. ~~A teacher shall be~~ Be an adult of good mental and physical, cognitive, social, and emotional health, capable of and shall use mature judgment, and shall possess knowledge of teaching and working with young children: when making decisions impacting the quality of child care and early childhood education.
2. ~~The teacher shall have met~~ Hold at least one of the following qualifications:
  - a. A bachelor's degree with at least eight semester hours or twelve quarter hours in child development, child psychology, or ~~fields~~ directly related ~~thereto~~ fields;

- b. A teaching certificate in elementary education or kindergarten endorsement;
  - c. An associate degree in the field of early childhood education;
  - d. ~~Certification~~ Current certification as a child development associate or similar status ~~where such a local, state, or federal certification program exists;~~ or
  - e. Certification from a Montessori teacher training program.
3. ~~If the teacher is also the director, that individual shall meet~~ Meet the qualifications of the director and perform the function of a director as defined in section 75-03-11-08.1, if the teacher is also the director.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11-08.3. Minimum qualifications of a preschool educational facility aide assistant.** Each aide assistant shall:

- 1. ~~Be mentally, physically, and emotionally able to provide care and attention to the children in the aide's charge~~ an individual of good physical, cognitive, social, and emotional health and use mature judgment when making decisions impacting the quality of child care and early education.
- 2. ~~Meet one of the following qualifications:~~
  - a: ~~A~~ Hold either a high school diploma; or
  - b: ~~A~~ a high school equivalency.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11-09. Staffing requirements.**

- 1. The number of staff members and their ~~use shall~~ responsibilities must reflect program requirements; and individual differences in the needs of the children enrolled, and ~~shall may permit flexible groupings~~ mixed-age groups, where if necessary. Service personnel ~~that are~~ engaged in housekeeping and food preparations ~~shall may~~ not be counted in the child ~~and to~~ staff member ratio for periods of time when they are ~~so~~ engaged in housekeeping or food preparation.



2. ~~The minimum ratio of caregivers or program staff~~ members responsible for caring for or teaching children to children in preschool educational facilities must be:
  - a. If all children in care are children two years of age to three years of age, one staff member may care for six children, a ratio of .167 in decimal form.
  - b. If all children in care are children three years of age to four years of age, one staff member may care for eleven children, a ratio of .09 in decimal form.
  - c. If all children in care are children four years of age to five years of age, one staff member may care for thirteen children, a ratio of .077 in decimal form.
  - d. If all children in care are children five years of age to six years of age, one staff member may care for sixteen children, a ratio of .063 in decimal form.
  - e. There must be at least one director or teacher, in addition to at least one staff member responsible for caring for or teaching children, per group of ten children, if the group includes children two years old.
  - f. There must be at least one director or teacher, in addition to at least one staff member responsible for caring for or teaching children, per group of twenty children, if the group includes children three years old.
  - g. There must be at least one director or teacher, in addition to at least one staff member responsible for caring for or teaching children, per group of twenty-four children, ages four to six.
  - h. ~~There must be one Montessori-certified director or teacher per group of thirty children enrolled in accredited Montessori programs.~~
3. When there are mixed-age groups, the number of children in each category is multiplied by the corresponding ratio number, converted to decimal form, and carried to the nearest hundredth. To determine the number of staff members responsible for caring for or teaching children necessary at any given time, numbers of staff members for all age categories are added, and any fractional staff member count is then rounded to the next highest whole number whenever the fractional staff member count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.
4. ~~If a child in care has a disabling condition, and which requires more than usual care~~ with special needs is admitted to the preschool, the child's

developmental age level must be used in determining the number of children for which care may be provided child to staff ratios.

4. ~~5. Children~~ The operator shall ensure that a child with special conditions needs requiring more than usual care and supervision shall have has adequate care and supervision provided to them without adversely affecting care provided to the remaining other children in the facility preschool.
5. ~~To determine the number of caregivers necessary at any given time, numbers of caregivers for all age categories are added, and any fractional caregiver count is then rounded to the next highest whole number whenever the fractional caregiver count amounts to thirty-five hundredths or more. If lower than thirty-five hundredths, the fractional amount is dropped.~~
6. Children using the licensed facility preschool for a McGruff safe house, a block house, or a certified safe house program during an emergency are not counted under this section.

**History:** Effective December 1, 1981; amended effective July 1, 1984; January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02.1, 50-11.1-04, 50-11.1-08

**75-03-11-10. [Reserved] Duties of a preschool director.** The director, in collaboration with the operator, shall:

1. Implement policies and procedures for maintaining compliance with licensing rules;
2. Maintain required enrollment, attendance, health, and other required records;
3. Screen, schedule, supervise, and be responsible for the conduct of staff members while the staff members are on duty;
4. Ensure safe care for the children under supervision. Supervision means a staff member responsible for caring for or teaching children being within sight or hearing range of each child at all times so the staff member is capable of intervening to protect the health and safety of the child; and



5. Perform other duties as delegated by the operator.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11-11. [Reserved] Duties of a preschool teacher.** A teacher, in collaboration with the director, shall:

1. Communicate with parents about the individual needs of their children, including any special concerns the parents may have;
2. Plan daily and weekly schedules of activities and make those plans available to parents; and
3. Ensure that the program policies are adhered to in the class or group assigned to the teacher.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11-12. [Reserved] Minimum qualifications of volunteers.** If a volunteer is providing child care, the volunteer shall meet the qualifications of a staff member responsible for caring for or teaching children and must receive orientation for all assigned tasks.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11-13. Minimum health and training requirements for applicants, operators, and staff members.**

1. ~~Each operator or caregiver shall complete a health self-certification form certifying that the operator or caregiver does not have health problems that would interfere with the person's functioning as a caregiver or that would be detrimental to the health of the children or other staff. If the operator adds or replaces a caregiver after the licensure process is complete, the operator shall submit a self-certification form completed by the new caregiver to the county within five working days of the caregiver's first workday.~~
2. ~~Each operator or caregiver shall furnish documentation of a negative Mantoux tuberculosis test prior to initial licensure or employment, and every two years thereafter. If the operator adds or replaces a caregiver after the licensure process is complete, the caregiver shall furnish documentation of a negative Mantoux tuberculosis test before the first day of employment. Substitute staff are exempted from this~~

~~requirement. A preschool educational facility operator who uses an untested emergency designee may not be found in violation of this provision.~~

- ~~3.~~ If the physical ~~or mental~~, cognitive, social, or emotional health capabilities of an applicant, operator, or caregiver staff member appears questionable, the department may require the individual to be evaluated by appropriate professionals, with the results provided to the department present evidence of the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for the costs of any required evaluation.
- ~~4.~~ 2. ~~While children are in care, A staff members shall member may not use or be under the influence of any alcohol or judgment-altering alcoholic beverages or illegal drugs while children are in care.~~
3. A staff member may not place a child in an environment that is harmful or dangerous to the child's physical, cognitive, social, or emotional health.
- ~~5.~~ 4. All staff members responsible for caring for or teaching children shall certify attendance at county-approved completion of department-approved training related to child care annually.
  - ~~a.~~ Staff A staff member working thirty to forty or more hours per week shall certify a minimum of thirteen hours of county-approved department-approved training annually.
  - ~~b.~~ Staff A staff member working fewer than thirty hours and at least twenty to thirty hours per week shall certify a minimum of eleven hours of county-approved department-approved training annually.
  - ~~c.~~ Staff A staff member working fewer than twenty hours and at least ten to twenty hours a week shall certify a minimum of nine hours of county-approved department-approved training annually.
  - ~~d.~~ Staff A staff member working less fewer than ten hours per week shall certify a minimum of seven hours of county-approved department-approved training annually.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-11-14. Minimum requirements for facility.**

- ~~1.~~ The preschool educational facility must be properly lighted. ~~The following technical requirements must be met:~~



- ~~a. Sixty-five foot-candles of light for all general use and play areas;~~
- ~~b. Twenty-five foot-candles of light for all bathrooms;~~
- ~~c. Fifteen foot-candles of light for corridors and storage areas; and~~
- ~~d. Fifty foot-candles of light for any kitchen, laundry, and office areas.~~
- ~~e. If the lighting of the preschool educational facility appears questionable, the department or county agency may require the operator to obtain additional lights so that a minimum of sixty-five foot-candles of light is used in the areas generally used for children's activities. If the lighting of the preschool appears questionable, the department may require the operator to obtain additional lights so that a minimum of sixty-five foot-candles of light is used in the areas generally used for children's activities.~~

2. Water supply.

- a. The operator shall ensure that the preschool educational facility must have has a drinking water supply from an approved community water system or from a source tested and approved annually by the state department of health;
- b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual single-service drinking cups; and
- c. The preschool educational facility must have hot and cold running water. ~~Hot water heaters must be turned down or there must be a tempering valve or antiscalding device on~~ The water in the faucets used by children so that the temperature of hot water supplied to lavatories and bathing facilities does must not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].

3. Toilet and ~~lavatory~~ sink facilities:

- a. ~~Toilet~~ The operator shall provide toilet and lavatory sink facilities must be provided and must be convenient which are easily accessible to the areas used by the children and staff members;
- b. ~~Toilet and lavatory facilities must meet requirements of the state department of health;~~
- c. ~~A~~ The operator shall provide a minimum of one lavatory sink and one flush toilet must be provided for each fifteen children, excluding those children who are not toilet trained;

d. ~~c.~~ At The operator shall provide at least one handwashing lavatory must be provided sink per toilet room facility; and

e. ~~d.~~ Sanitary The operator shall provide hand soap, sanitary hand-drying equipment, individual single-use cloth, towels, or paper towels must be provided near handwashing lavatories sinks.

4. ~~Sewage and wastewater disposal:~~

a. ~~Any The operator of a preschool educational facility not on a municipal or public water supply or wastewater disposal system shall have its ensure the preschool's sewage and wastewater system has been approved by the state department of health.~~

b. ~~The preschool educational facility shall meet the requirements of the state plumbing code, North Dakota Administrative Code article 62-03.~~

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** ~~NDCC 50-11.1-02, 50-11.1-02.1~~ 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11-15. Minimum standards for provision of transportation.**

1. ~~The provider~~ Prior to licensing, the operator shall establish a written policy governing the transportation of children to and from the preschool educational facility, if the preschool educational facility provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the preschool educational facility. If the preschool educational facility provides transportation, the ~~provider~~ operator shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.

2. ~~If~~ When transportation is provided by a preschool educational facility, children must be protected by adequate staff ~~member~~ supervision, safety precautions, and liability ~~and medical insurance.~~

a. ~~Child and staff ratios~~ Staffing requirements must be maintained to assure the safety of children while being transported.

b. A child may not be left unattended in a vehicle.

3. Children must be instructed in safe transportation conduct as appropriate to their age and stage of development.



4. The driver must be eighteen years of age or older and must comply with all relevant federal, state, and local laws, including child restraint system laws.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11-16. ~~{Reserved}~~ Minimum emergency evacuation and disaster plan.**

1. Each operator shall establish and post an emergency disaster plan for the safety of the children in care. Written disaster plans must be developed in cooperation with local emergency management agencies. The plan must include:
  - a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;
  - b. What will be done if parents are unable to pick up their child as a result of the emergency; and
  - c. What will be done if the group child care has to be relocated or must close as a result of the emergency.
2. Fire and emergency evacuation drills must be performed in accordance with the local fire department's guidelines.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-11-17. Fire inspections. Annual**

1. The operator shall ensure that annual fire inspections ~~must be~~ are completed ~~for the preschool~~ by local or state fire authorities. ~~Emergency plans must be developed in cooperation with authorities.~~ The operator shall ~~correct or have corrected~~ any code violations noted by the fire inspector ~~corrected~~ and shall file reports of the inspections ~~and any corrections~~ with the ~~county licensing agency~~ authorized agent.
1. ~~The program must provide the following as approved by an appropriate fire official:~~
  - a. ~~Approved smoke detectors placed as directed;~~

- b. ~~Fire extinguishers that bear approval ratings for 2A classification or better;~~
  - c. ~~Emergency exit signs with at least six-inch [15.24-centimeter] stroke letters;~~
  - d. ~~At least two qualifying exits;~~
  - e. ~~A boiler room door and frame with a one-hour fire-rated enclosure if it faces an exit corridor; and~~
  - f. ~~A self-closing solid-core door on any stairwells if the preschool educational facility is more than a two-story building.~~
2. ~~Fire evacuation drills must be performed in accordance with the local fire department's guidelines.~~
3. 2. The preschool educational facility shall be operator shall ensure that the preschool is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department or state fire marshal.
3. The operator shall provide:
- a. The fire inspector's written statement of compliance with the local fire code; or
  - b. The fire inspector's written statement that the preschool has been inspected and that the inspector is satisfied that the preschool meets the minimum fire and safety standards.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-11-18. Minimum sanitation and safety requirements.**

- 1. ~~The preschool educational facility's~~ operator shall ensure that the preschool's bathroom lavatories sinks, toilets, tables, chairs, and floors ~~must be~~ are cleaned daily. Cots and mats, if used, must be maintained in a clean, sanitary condition.
- 2. ~~The preschool educational facility's~~ operator shall ensure that the preschool's building, grounds, and equipment ~~must be~~ are located, cleaned, and maintained to protect the health and safety of children. ~~Routine~~ The operator shall establish routine maintenance and cleaning



procedures ~~must be established~~ to protect the health of the children and ~~caregivers~~ staff members.

3. ~~If~~ The operator shall ensure that in preschools where meals are prepared, the state department of health shall conduct conducts an annual inspection. If only snacks or occasional cooking projects are prepared, a state department of health inspection is not required. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the authorized agent.
4. ~~Indoor~~ The operator shall ensure that indoor and outdoor equipment, toys, and supplies must be are safe, strong, nontoxic, and in good repair. ~~All~~ The operator shall ensure that all toys must be easily cleanable and must be cleaned and sanitized on a routine basis and equipment are kept clean and in a sanitary condition. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
5. ~~There must be~~ The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. ~~During the heating season when~~ All heating devices must be approved by the local fire authorities. When the preschool educational facility is occupied by children, the room temperature may not be less than sixty-eight sixty-five degrees Fahrenheit [20 18 degrees Celsius] and not more than seventy-four seventy-five degrees Fahrenheit [23.33 24 degrees Celsius] measured three feet [91.44 centimeters] above the floor. All heating devices must be approved by the local fire authorities.
6. ~~Exterior~~ The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas must be are contained, or fenced, or have natural barriers to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
7. ~~Potential~~ The operator shall ensure that potential hazards, including such as noncovered electrical outlets, guns, cleaning chemicals, uninsulated wires, medicines, and poisonous plants, and open stairways may are not be accessible to children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
8. ~~Indoor~~ The operator shall ensure that indoor floors and steps must are not be slippery ~~or~~ and do not have splinters. ~~Steps~~ The operator shall ensure that steps and walkways must be are kept free from accumulations of water, ice, snow, or debris.

9. ~~Elevated~~ The operator shall ensure that elevated areas such as including stairs or and porches must have railings and safety gates, where necessary to prevent falls.
10. ~~All heating devices must be approved by the local fire authorities.~~
11. ~~The preschool educational facility operator shall take steps to keep the preschool educational facility free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the preschool educational facility. Insect repellent may be applied outdoors on children with written parental permission.~~
12. ~~11. Combustible~~ The operator shall ensure that combustible materials must be are kept away from light bulbs and other heat sources.
13. ~~12. Exit~~ The operator shall ensure that exit doorways and pathways may are not be blocked.
14. ~~13. All~~ An operator shall ensure that all preschool educational buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be present, must have these painted surfaces repainted or must shall submit evidence that the surfaces paints or finishes do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the dried film or coating, when measured by a lead-detecting instrument approved by the state department of health.
15. ~~14. Wading~~ Staff members responsible for caring for or teaching children shall strictly supervise wading pools used by the preschool educational facility must be strictly supervised and emptied and cleaned shall empty, clean, and sanitize wading pools daily.
16. ~~15. All swimming pools used by children must be approved annually by the local health unit.~~
17. ~~16. All pets present in the preschool educational facility must be properly immunized, restricted, and maintained. Nondomestic animals, such as skunks, opossum, or raccoon, whether or not regarded as pets, may not be present in the preschool educational facility. Pets may not be allowed in the kitchen or eating area during meal preparation or meals. Pets and animals.~~



- a. The operator shall ensure that only cats, dogs, and small pets that are contained in an aquarium or other approved enclosed container are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children.
  - b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
  - c. The operator shall ensure parents are aware of the presence of pets and animals in the preschool.
  - d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.
  - e. A staff member responsible for caring for or teaching children shall closely supervise all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
  - f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
  - g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.
  - h. The operator shall ensure that the preschool is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.
17. Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after diapering, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids.
- ~~18. Smoking is not permitted in any preschool educational facility at any time during which a child who receives early childhood services from that preschool educational facility is present and receiving services.~~

**History:** Effective December 1, 1981; amended effective January 1, 1987; September 1, 1990; July 1, 1996; July 1, 1996, amendments voided by the

Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, ~~50-11.1-02.2~~, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11-19. Minimum requirements regarding space.**

1. Each preschool ~~educational facility~~ shall provide adequate indoor and outdoor space for the daily activities of all children in attendance for the licensed capacity of the preschool.
2. ~~The preschool educational facility shall provide adequate space, indoors and out, for the daily activities of the children. This Adequate space~~ must include a minimum of thirty-five square feet [3.25 square meters] of indoor space per child ~~indoors~~ and a minimum of seventy-five square feet [6.97 square meters] of outdoor play space per child ~~outdoors~~. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space children are not permitted to occupy. If available outdoor play space does not accommodate the licensed capacity of the preschool ~~educational facility at one time,~~ the total appropriate outdoor play space available must be no less than the number of children in the largest class or group of the preschool multiplied by seventy-five square feet [6.97 square meters]. The operator shall prepare a written schedule of outdoor playtime which limits use of the play area to its capacity, giving ~~every child each class or group~~ an opportunity to play outdoors daily.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11-20. Program requirements.**

1. A preschool ~~educational program~~ must have a written curriculum which describes the program's philosophy, goals, objectives, and a program evaluation process.
- ~~2.~~ a. The curriculum must promote ~~intellectual~~ cognitive, social, emotional, and physical ~~development~~ growth of children in care.
- ~~3.~~ b. The curriculum must be based on the developmental levels and needs of children enrolled.
- ~~4.~~ 2. The director shall exchange information with parents concerning the program, its activities, and the adjustment of the child to the program.



- 5- ~~3.~~ Each child's cultural and ethnic background and primary language or dialect must be respected by the ~~caregivers~~ staff members.
- 6- ~~4.~~ ~~There must be~~ The director or teacher shall design a written daily plan of program activities for the children enrolled in the program.

**History:** Effective December 1, 1981; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-11-21. Minimum standards for the provision of snacks.** ~~Children~~ An operator shall serve a nutritious snack on a regular basis to children in care for more than two and one-half hours ~~shall be served a nutritious snack on a regular basis.~~

**History:** Effective December 1, 1981; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

#### **75-03-11-22. Records.**

1. ~~A~~ The operator shall keep a copy of this chapter ~~must be kept on the premises of the preschool and shall make it available to staff members at all times.~~
2. ~~The preschool educational facility operator~~ shall maintain the following records:
  - a. The child's full name, ~~birthdate~~ birth date, current home address, legal names of the child's parents ~~or legal guardian~~, and the business and home personal telephone numbers where ~~those individuals may they can~~ be reached;
  - b. A written statement from the parents ~~or legal guardian~~ authorizing emergency medical care;
  - c. Names and telephone numbers of individuals who may assume responsibility for the child if the ~~individual~~ individuals legally responsible for the child ~~may not~~ cannot be reached immediately in an emergency;
  - d. Names and telephone numbers of individuals authorized to take the child from the preschool ~~educational facility~~;
  - e. Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, or have on file a document citing that the

child is medically exempt or exempt from immunizations based on religious, philosophical, or moral beliefs, unless the child is a drop-in child; and

- f. A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child, ~~that which~~ must indicate any special precautions for diet, medication, or activity, ~~must serve as evidence that a child is physically able to take part in the child care program, and must be completed annually. This assessment must be completed annually.~~
- 3. ~~All~~ The operator shall verify the identification of the child through official documentation such as a certified birth certificate, certified school records, passport, or any other documentary evidence the provider considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.
- 4. The operator shall ensure that all records, photographs, and information maintained with respect to children receiving child care services must be are kept confidential, and that access must be is limited to staff members, the parents, or legal guardian of each child, and to the following, unless otherwise protected by law:
  - a. ~~Authorized county agency~~ The authorized agent and department representatives;
  - b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
  - c. Individuals who possess written authorization from the child's parent or legal guardian. The preschool educational facility shall have a release of information form available and shall have the form signed prior to the release of information.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11-23. Discipline - Punishment prohibited.** Disregard of any of the following disciplinary rules ~~is grounds for denial or revocation. or any disciplinary measure resulting in physical or emotional injury, neglect, or abuse to any child is grounds for license denial or revocation:~~

- 1. The preschool educational facility must have a written policy regarding the discipline of children ~~that must be interpreted to.~~ The operator



shall provide the policy to, and discuss the policy with, staff members responsible for caring for or teaching children before the preschool educational facility begins operation or before staff members begin working with children.

2. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, ~~praise for~~ praising appropriate behavior, ~~and or~~ gentle physical restraint, such as holding. ~~Children~~ A child may not be subjected to physical harm, fear, or humiliation.
3. Authority to discipline may not be delegated to ~~or children nor may discipline be accomplished administered~~ by children.
4. Separation, when used as discipline, must be ~~brief and~~ appropriate to the child's age development and circumstances. ~~Any~~ The child must be in a safe, lighted, well-ventilated room within sight or hearing range of an adult a staff member responsible for caring for or teaching children. ~~A staff member may not isolate a child may not be isolated~~ in a locked room or closet.
5. A child may not be ~~physically~~ punished for lapses in toilet training.
6. ~~When addressing a child, or while in the presence of a child, staff members may not~~ A staff member may not use verbal abuse or make derogatory remarks about the a child, the or a child's family, race, or religion nor use profane, threatening, unduly loud, or otherwise abusive language when addressing the child or in the presence of other children.
7. A staff member may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
8. A child staff member may not be force-fed, force-feed a child or coerce a child to eat unless medically prescribed and administered under a physician's medical provider's care.
- 8- 9. ~~Deprivation~~ A staff member may not use deprivation of meals may not be used or snacks as a form of discipline or punishment.
- 9- 10. A staff member or any other adult in or at the preschool may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child may not be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by any staff member or any other adult in the facility.
11. A staff member may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in the mouth of a child to deter the child from biting other children.

12. A staff member may not withhold active play as a form of discipline or punishment, beyond a brief period of separation.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11-25. Minimum requirements for care of children a child with special needs.** When The operator shall make appropriate accommodations, as required by the Americans with Disabilities Act, to meet the needs of children with special needs are admitted, there must be appropriate provisions to meet those needs. The operator shall receive documentation of the child's special needs from the parent upon the child's enrollment.

1. When children a child with special needs are is admitted, the preschool educational facility operator shall consult with the child's parents, and with the parent's permission, the child's source of professional health care, or, when appropriate, other health and professional consultants to gain an understanding of the child's individual needs. The operator shall receive a written health care plan from the child's medical provider or parent with information related to the child's special needs, such as a description, definition of the diagnosis, and general information for emergency and required care such as usual medications and procedures.
2. The caregivers operator shall ensure staff members responsible for caring for or teaching children receive proper instructions as to the nature of the child's disability special needs and potential for growth and development.
3. If the nature of the special need or the number of children with special needs warrants added care, the preschool educational facility shall add sufficient staff and equipment as deemed necessary by the department to compensate for those needs.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-11-26. Minimum provisions regarding emergency care for children.** The preschool educational facility shall must have written plans to respond to illness and emergencies including burns, serious injury, and ingestion of poison. Parents The operator shall ensure that parents of enrollees must be enrolled children are advised of these plans. Plans must provide for:



1. ~~The conspicuous~~ Establish emergency response procedures:
2. Provide accessible posting of emergency response procedures: ~~and require training for all staff members concerning those emergency procedures:~~
2. ~~The establishment of emergency response procedures:~~
3. ~~The~~ Require the availability of at least one working flashlight:;
4. ~~Maintenance of~~ Require at least one ~~state department of health-approved~~ department-approved first-aid kit maintained and kept in a designated location, inaccessible to children, yet readily accessible to ~~caregivers~~ staff members at all times;
5. ~~A~~ Provide a working telephone line immediately accessible to the ~~caregivers~~ staff members with a list of emergency telephone numbers conspicuously posted ~~adjacent to the telephone:~~;
6. ~~Responses~~ Provide a plan for responding to be made regarding minor illnesses ~~and minor accidents~~ when children are ~~cared for in the care of the preschool educational facility~~, and provide a plan for accessing available medical consultation regarding special care and medication:;
7. ~~Written~~ Require written permission to dispense medication and proper instructions for the administration of medication, obtained from the parent if of a child in the preschool ~~education facility~~ who requires medication.
  - a. ~~Medications~~ Medication prescribed by a ~~physician~~ medical provider must be accompanied by the ~~physician's~~ medical provider's written instructions as to dosage and storage, and labeled with the child's name and ~~dated:~~ date;
  - b. ~~Medications~~ Medication must be stored in an area inaccessible to children, and ~~medications~~ medication stored in a refrigerator must be stored collectively in a spillproof container:; and
  - c. ~~A~~ The operator shall keep a written record of the administration of medication, including over-the-counter medication, ~~to for~~ for each child ~~shall be kept~~. Records must include the date and time of each ~~administration~~ dose administered, the dosage, the name of the staff member administering the medication, and the name of the child. ~~Completed~~ The operator shall include completed medication records ~~shall be included~~ in the child's record:;
8. ~~The designation of~~ Require a supervised temporary isolation area designated for a child who is too ill to remain in the ~~group preschool~~, or who has an infectious or contagious disease, with the following

procedures being followed when those signs or symptoms are observed:

- a. Parents are notified immediately and asked to pick up their child; and
  - b. First aid is provided and medical care is sought, as necessary;.
9. ~~Provisions for emergency transportation, specifically that when a child is brought to another place for~~ Identify a source of emergency services available to the preschool, including:
- a. A prearranged plan for emergency medical care in which parents of enrolled children are advised of the arrangement; and
  - b. Provisions for emergency transportation, specifically that when a child is to be brought to another place for emergency care, an adult staff member responsible for caring for or teaching children shall remain with the child ~~is accompanied by an adult who remains with the child~~ until medical personnel assume the responsibility for the child's care and until the parent or legal guardian arrives. is notified;
10. ~~Practices in which~~ Establish and implement practices in accordance with guidance obtained through consultation with local or state health department authorities regarding the exclusion and return of children with infectious or communicable conditions are excluded from the preschool educational facility until the condition may no longer be transmitted. Guidance regarding exclusion and return to the preschool educational facility must be obtained through consultation with local and state health department authorities. The operator may obtain this guidance directly or through current published materials regarding exclusion and return to the preschool;
11. Require information be provided to parents, as needed, concerning child health and social services available in the community; and
12. Require that the preschool inform parents in writing of any first aid administered to their child within twenty-four hours of the incident, immediately notify parents of any injury which requires emergency care beyond first aid, and require each injury report to be made a part of the child's record.

**History:** Effective December 1, 1981; amended effective January 1, 1987; July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC ~~50-11.1-07.2~~ 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-11-27. Effect of conviction on licensure and employment.**



1. ~~A preschool educational facility~~ An applicant, operator, or director may not be, and a preschool educational facility may not employ or allow, in any capacity that involves or permits contact between the ~~employee teacher, assistant, emergency designee, or staff member~~ and any child cared for by the preschool educational facility, an individual operator, director, staff member, teacher, assistant, or emergency designee, who has been found guilty of, pled guilty to, or pled no contest to:
  - a. An offense described in North Dakota Century Code ~~chapters chapter~~ 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; ~~or~~ 12.1-18, kidnapping; ~~or~~ 12.1-27.2, sexual performances by children; or in North Dakota Century Code ~~sections section~~ 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; ~~or~~ 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; ~~North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections~~ 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; ~~or~~ 12.1-31-05, child procurement; ~~or an~~ 14-09-22, abuse or neglect of a child;
  - b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes offenses identified in subdivision a; or
  - ~~b. c.~~ c. An offense, other than an offense identified in subdivision a or b, if the department in the case of a preschool educational facility an applicant, operator, or director, or the preschool educational facility operator in the case of an employee a staff member, teacher, assistant, substitute staff member, or emergency designee, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in subdivision a or b of subsection 1 have a direct bearing on the applicant's, operator's, director's, teacher's, assistant's, substitute staff member's, emergency designee's, or a staff member's ability to serve the public as an operator, director, teacher, assistant, emergency designee, or a staff member.

3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.
4. The preschool educational facility operator shall establish written policies; and engage in practices that conform to those policies; to effectively implement this section, before hiring any directors, staff members, teachers, assistants, substitute staff members, or emergency designees.
3. For purposes of subdivision b of subsection 1, the department in the case of a preschool educational facility operator, or a preschool educational facility operator in the case of an employee, shall treat completion of a period of five years after final discharge from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.
4. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing upon an individual's ability to serve the public in a capacity involving the provision of child care services.
5. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

**75-03-11-28. Child abuse and neglect determinations.** If a probable cause determination or a decision that services are required An operator shall ensure safe care for the children receiving services in the preschool. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that any a child has been abused or neglected by a any applicant, operator, director, teacher, assistant, staff member, substitute



staff member, or emergency designee, it has a direct bearing on the applicant's or operator's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that individual any child has been abused or neglected by the applicant, operator, director, teacher, assistant, staff member, substitute staff member, or emergency designee, the applicant or operator shall furnish information satisfactory to the department, from which the department may can determine the applicant's, operator's, director's, teacher's, assistant's, staff member's current, substitute staff member's, or emergency designee's ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability must be furnished to the preschool educational facility applicant or operator and to the regional director of the regional human service center or the regional director's designee for consideration and action on the preschool educational facility application or license. Each applicant, operator, director, teacher, assistant, staff member, substitute staff member, and emergency designee shall complete a department-approved authorization for background check form no later than the first day of employment.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08, 50-11.1-09

**75-03-11-29. ~~Allowable time periods for correction~~ Correction of deficiencies violations.**

1. Deficiencies Within three business days of receipt of the correction order, the operator shall notify the parents of each child enrolled in the preschool that a correction order has been issued. In addition to providing notice to the parent of each child, the operator shall post the correction order in a conspicuous location within the preschool until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
  - a. For a violation of section 75-03-11-09, ~~or~~ section 75-03-11-23, or subsection 7 of section 75-03-11-18, within twenty-four hours;
  - b. For a violation ~~or deficiency~~ requiring the hiring of a director with those qualifications set forth in section 75-03-11-08.1 or a teacher with those qualifications as set forth in section 75-03-11-08.2, within sixty days;
  - c. For a ~~deficiency~~ violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-11-17, within sixty days;

- d. For a deficiency violation that requires substantial building remodeling, construction, or change, within sixty days; and
  - e. For all other deficiencies violations, within twenty days.
- 2- 3. All periods for correction begin on the date of receipt of the correction order by the licensee operator.
  - 3- 4. The regional supervisor of early childhood program licensing services may grant an extension of additional time to correct deficiencies violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the licensee operator and a showing that the need for the extension is created by unforeseeable circumstances and the licensee operator has diligently pursued the correction of the deficiency violation.
  - 4- 5. The operator shall furnish written notice ~~of to the authorized agent upon completion of the correction order required corrective action to the county agency.~~ remains in effect until the county agency receives the notice authorized agent confirms that the corrections have been made.
  6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a preschool that has been issued a correction order. If, upon reinspection, the department or its authorized agent determines that the preschool has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the preschool. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
  7. If a preschool receives more than one correction order in a single year, the operator may be referred by the department for consulting services. The consulting services will be offered to assist the operator in maintaining compliance and to avoid future corrective action.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

#### **75-03-11-30. Fiscal sanctions.**

1. A The department shall assess a fiscal sanction of twenty-five dollars per day must be assessed for each violation of section 75-03-11-13, 75-03-11-17, 75-03-11-18, or 75-03-11-19 for each day that the operator has not verified correction, after the allowable time for correction of deficiencies violations ends, that the preschool educational facility operator has not verified correction.



2. A The department shall issue a fiscal sanction of fifteen dollars per day ~~must be assessed~~ for each violation of section 75-03-11-09 for each day that the operator has not verified correction, after the allowable time for correction of ~~deficiencies~~ violations ends, that the ~~preschool-educational facility operator~~ has not verified correction.
3. A The department shall issue a fiscal sanction of five dollars per day ~~must be assessed~~ for each violation of any other provision of this chapter for each day that the operator has not verified correction, after the allowable time for correction of ~~deficiencies~~ violations ends, that the ~~preschool-educational facility operator~~ has not verified correction.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-07.4, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-07.4, 50-11.1-08

**75-03-11-31. Appeals.** An applicant or operator may appeal a decision to deny or revoke a license by filing a written appeal with the department. The appeal must be postmarked or received by the department within ten calendar days of the applicant's or operator's receipt of written notice of such a the decision to deny or revoke the license. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-08, ~~50-11.1-09~~ 50-11.1-10

## CHAPTER 75-03-11.1

**75-03-11.1-03. Definitions.** As The terms used in this chapter have the same meanings as in North Dakota Century Code section 50-11.1-02. In addition, as used in this chapter, unless the context or subject matter otherwise requires:

1. "Attendance" means the total number of children present at any one time at the facility.
2. ~~"Caregiver or group leader" means any individual whose prime responsibility is the provision of direct care, supervision, and guidance to school age children in a child care facility under the guidance and supervision of the school age child care center operator.~~ "Child with special needs" means a child whose medical providers have determined that the child has or is at risk of chronic physical, developmental, behavioral, or emotional conditions.
3. ~~"Department" means the North Dakota department of human services.~~
4. ~~"Director" means an individual responsible for supervising and organizing program activities in a school age overseeing the general operation of, and implementing the policies and procedures of, the school-age child care center program.~~
5. ~~4.~~ "Emergency designee" means an individual designated by the school age school-age child care center program to be a backup caregiver staff member for emergency assistance or to provide substitute care.
5. "Medication" means any drug or remedy which is taken internally or orally, inhaled, or applied topically.
6. ~~"Operator" means the individual or group governing board who has the legal responsibility and the administrative authority for the operations of a school age school-age child care center program. The operator is the applicant for license or the licensee under this chapter.~~
7. ~~"Parent" means an individual bearing the legal relationship of father or mother to a child enrolled in a school age child care center, including an individual who legally stands in place of a parent, such as a legal guardian or custodian.~~
8. ~~"School age child care center" means the location for adult supervised care of a school age child care program on a regular basis for nineteen or more children who are usually between the ages of five and twelve years old.~~
9. ~~"School age School-age child care center program satellite" means the location for adult supervised care of a school age child care program on a regular basis for nineteen or more children who are usually between~~



~~the ages of five and twelve years old in a building or a location used at any time by the a licensed school-age child care program other than the building or location listed as the main location on the license.~~

- ~~10.~~ 8. "School-age ~~School-age~~ child care program" or "program" means a ~~school-age child care center providing school-age child care program~~ licensed to provide early childhood services exclusively to school-age ~~school-age~~ children before and after school, during school holidays, and during summer vacation.
- ~~11.~~ "Staff member" means ~~operator, substitute staff, volunteer, caregiver, group leader, or any other individual whose prime responsibility is the provision of direct care, supervision, and guidance to children in the school-age child care center.~~
- ~~12.~~ 9. "Substitute staff" means ~~paid or unpaid~~ staff who work less than thirty-two hours per month and are not regularly scheduled for work.
- ~~13.~~ 10. "Supervisor ~~or site coordinator~~" means any person with the responsibility for organizing and supervising daily program activities.
- ~~14.~~ 11. "Volunteer" means an individual who visits or provides an unpaid service or visit, including a ~~fireperson~~ firefighter for fire safety week, a McGruff, ~~or Santa Claus person~~ practicum student, or a foster grandparent.

**History:** Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02

#### **75-03-11.1-04. Effect of licensing and display of license.**

1. The issuance of a license to operate a ~~school-age~~ school-age child care center program is evidence of compliance with the standards contained in this chapter and North Dakota Century Code chapter 50-11.1 at the time of licensure.
2. The current license must be displayed prominently in the premises to which it applies.
3. The license must specify the maximum number of children ~~who for whom the school-age child care program, including any satellite locations, may be cared for by the school-age child care center provide care.~~ The school-age school-age child care center program, including

satellite locations, may ~~at no time~~ not admit a greater number of children than the license allows.

**History:** Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-03, 50-11.1-04

#### **75-03-11.1-05. Denial or revocation of license.**

1. ~~A~~ The department may deny or revoke a license ~~may be denied or revoked~~ under the terms and conditions of North Dakota Century Code sections 50-11.1-04, 50-11.1-06.2, 50-11.1-09, and 50-11.1-10.
2. If an operator ~~appeals an action to revoke a license~~ ~~is appealed~~, the ~~licenseholder~~ operator may continue the operation of the ~~school-age~~ school-age child care ~~center~~ program pending the final administrative determination or until the license expires, whichever occurs first; provided, however, that this subsection does not limit the actions the department may take pursuant to North Dakota Century Code ~~section~~ sections 50-11.1-07.8 and 50-11.1-12.
3. The department may revoke a license to operate a ~~school-age~~ school-age child care ~~center~~ program without first issuing a correction order or simultaneously with a suspension if continued operation would jeopardize the health and safety of the children present or would violate North Dakota Century Code section 50-11.1-09.

**History:** Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09, 50-11.1-10

#### **75-03-11.1-06. Provisional license.**

1. The director of a regional human service center, ~~in the director's discretion~~, or the director's designee, in consultation with the department may issue a provisional license for the operation of a ~~newly opened school-age~~ school-age child care ~~center~~ or for a previously licensed school-age child care center program although the ~~school-age child care center applicant or operator~~ fails to, or is unable to, comply with all applicable standards and rules of the department.
2. A provisional license must:



- a. ~~Prominently state~~ State that the ~~school-age child care center operator~~ has failed to comply with all applicable standards and regulations of the department;
  - b. ~~State that the items of noncompliance are set forth on a document available upon request made to the operator;~~
  - c. Expire at a set date, not to exceed six months from the date of issuance; and
  - d. Be exchanged for an unrestricted license, which bears ~~the same~~ an expiration date of one year from the date of issuance as of the provisional license, ~~upon demonstrating after the applicant or operator demonstrates~~ compliance, satisfactory to the department, with all applicable standards and rules.
3. ~~A~~ The department may issue a provisional license ~~may be issued~~ only to an applicant or operator who has waived, in writing:
    - a. The right to a written statement of charges as to the reasons for the denial of an unrestricted license; and
    - b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the nonissuance of an unrestricted license, either at the time of application or during the period of operation under a provisional license.
  4. Any provisional license issued must be accompanied by a written statement of violations signed by the ~~regional~~ director of the regional human service center or the ~~regional~~ director's designee and must be acknowledged in writing by the applicant or operator.
  5. Subject to the exceptions contained in this section, a provisional license entitles the ~~holder~~ operator to all rights and privileges afforded the ~~holder operator~~ of an unrestricted license.
  6. The department may not issue a provisional license if the ~~facility~~ school-age child care program is not in compliance with section 75-03-11.1-17 or 75-03-11.1-18.
  7. The operator shall ~~prominently~~ display prominently the provisional license and agreement.

8. The operator shall provide parents written notice that the facility school-age child care program is operating on a provisional license and the basis for the provisional license.

**History:** Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-03, 50-11.1-04, 50-11.1-08

**75-03-11.1-06.1. Restricted license.** The department may issue a restricted license:

1. To restrict an individual's presence when children are in care;
2. To restrict a pet or animal from areas accessible to children; or
3. When necessary to inform parents that the operator is licensed, but is restricted to operating in certain rooms or floors of the facility or restricted from using specific outdoor space of the facility.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04

**75-03-11.1-07. Application for and nontransferability of school-age school-age child care center program license.** ~~An application for a license must be submitted to the county agency in the county in which the facility is located.~~

1. An applicant shall submit an application for a license to the authorized agent. Application must be made in the form and manner prescribed by the department.
2. The A license issued under this chapter is nontransferable and is valid only on for the premises indicated on the license.
3. ~~A new~~ An application for a new license must be filed by a licensed center upon change of operator or location.
4. The department may not issue more than one child care license per residence. A residence means real property that is typically used as a single family dwelling. This subsection applies to new licenses issued on or after October 1, 2010. Existing operators will be exempt from this



provision until October 1, 2015, after which time all operators will be subject to the requirements of this subsection.

**History:** Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC ~~50-11.1-03.1, 50-11.1-04(3)~~ 50-11.1-03, 50-11.1-04, 50-11.1-06.2, 50-11.1-07, 50-11.1-08

**75-03-11.1-08. Duties of ~~school-age~~ school-age child care center program operator.** The operator of a ~~school-age~~ school-age child care center program is responsible to the department for compliance with the requirements set forth in the ~~standards~~ this chapter and North Dakota Century Code chapter 50-11.1. ~~In meeting this responsibility, the~~ The operator shall ensure:

1. ~~Establishment of the school-age child care program;~~ Shall designate a qualified director, shall delegate appropriate duties to the director, and shall:
  - a. Ensure that the director is present at the school-age child care program at least sixty percent of the time that the program is open. If the operation has satellite sites, the director shall be present a combined total of sixty percent of the school-age program's hours of operation.
  - b. Ensure that when the director and designated acting director are not present at the program, a person who meets the qualifications of a supervisor is on duty.
  - c. Ensure that the individual designated as an acting director for longer than thirty consecutive days meets the qualifications of a school-age child care program director.
  - d. Ensure that if the operator of the school-age child care program is also the director, that the operator meets the qualifications of a director set forth in section 75-03-11.1-08.1;
2. ~~An application is made~~ Shall apply for a license for each school-age the school-age child care center-operated program;
3. ~~Creation of an outline of a written plan and policies for the operation of each school-age child care center;~~ Shall provide an environment that is physically and socially adequate for children;
4. ~~Notification is provided to~~ Shall notify the county agency authorized agent of any major changes in the operation of, or in the ownership or governing body of the school-age school-age child care center and of any program, including staff member changes;

5. ~~Liability~~ Shall ensure that the school-age child care program carries liability insurance for against bodily injury and property damage for the school-age child care center is carried;
6. ~~The development and maintenance of~~ Shall formulate written policies and procedures relating to children's activities and care, enrollment, and the responsibilities and rights of staff and parents; for the operation of the school-age child care program relating to:
  - a. Hiring practices and personnel policies for all staff members;
  - b. Methods for obtaining references and employment histories of staff members;
  - c. Methods of conducting staff member performance evaluations;
  - d. Children's activities, care, and enrollment; and
  - e. The responsibilities and rights of staff members and parents;
7. ~~That personnel policies include written references, employment histories, and a method of conducting staff performance evaluations;~~
8. ~~Maintenance of~~ Shall maintain enrollment, attendance, health, financial, and other related required records as required by statute or rule;
9. ~~8. Authorization is obtained from each staff member and volunteer for the department to conduct a child abuse and neglect background check; Shall select an emergency designee;~~
10. ~~9. Maintenance of~~ Shall maintain necessary information to verify staff member qualifications and to ensure safe care; for the children in the school-age school-age child care center program;
11. ~~Designation of a qualified director. The minimum qualifications for a director are set forth in section 75-03-11.1-08.1, but specifically:~~
  - a. ~~At no time shall a school-age child care center be without a director or an acting director;~~
  - b. ~~An individual designated as acting director for an ongoing period of less than thirty days shall meet the qualifications of a supervisor or site coordinator under section 75-03-11.1-08.3; and~~
  - c. ~~An individual designated as acting director for an ongoing period of more than thirty days shall meet the qualifications of a director under section 75-03-11.1-08.1;~~



- ~~12-~~ 10. ~~Parents~~ Shall inform parents of enrolled children and other interested parties ~~are informed~~ about the ~~school-age~~ school-age child care center's program's goals, policies, procedures, and content of the program, including:
- a. How accidents and illnesses will be ~~dealt with~~ handled; and
  - b. Methods of developmentally appropriate discipline and ~~developmentally appropriate~~ guidance techniques to be used; and
  - c. The process for reporting a complaint, a suspected licensing violation, and suspected child abuse or neglect;
- ~~13-~~ 11. ~~Parents~~ Shall advise parents of enrolled children ~~are advised~~ of the ~~school-age~~ school-age child care center's program's service fees, operating policies and procedures, location, and the name, address, and telephone number of the operator and the director;
- ~~14-~~ 12. ~~Written notice is provided to the~~ Shall provide parents of enrolled children ~~information~~ regarding the effective date, duration, scope, and impact of any significant changes in the ~~school-age~~ school-age child care center's program's services;
- ~~15-~~ 13. ~~That the center~~ Shall ensure that the school-age child care program is sufficiently staffed at all times to ~~provide physical care to each child for the benefit of their social competence, emotional well-being, and intellectual development~~ meet the child to staff ratios for children in attendance and that no more children than the licensed capacity are served at any one time;
- ~~16-~~ 14. ~~That~~ Shall ensure that the school-age ~~school-age child care center program~~ has sufficient qualified ~~caregivers on call~~ staff members available to substitute for regularly assigned staff who are sick, on leave, or who are otherwise unable to be on duty;
- ~~17-~~ 15. ~~That~~ Shall ensure that there are signed written agreements with the parents of each child that specify the fees to be paid, methods of payment, and policies regarding delinquency of fees;
- ~~18-~~ 16. ~~That~~ Shall ensure that written policies are established which ~~provide for~~ address the provision of emergency medical care, the care of children ~~a child with special physical, emotional, or mental needs; if children with these needs are~~ a child with special needs is in care, and the treatment of illness and accident;
- ~~19-~~ 17. ~~That~~ Shall ensure that written policies are established concerning the care and safeguarding of personal belongings brought to the ~~school age~~ school-age child care center program by ~~children~~ a child or others by another on their the child's behalf;

- ~~20- 18.~~ ~~Parents are provided~~ Shall provide parents with unlimited access and opportunities for parents to observe their children ~~at any time~~ while in care and ~~are provided~~ provide parents with regular opportunities to meet with ~~caregivers~~ staff members responsible for caring for or teaching children before and during enrollment to discuss their children's needs. Providing unlimited access does not prohibit a school-age child care program from locking its doors when children are in care;
- ~~21- 19.~~ ~~Parents are provided~~ Shall provide parents, upon request, any with progress reports on their children;
- ~~22- 20.~~ ~~Provisions~~ Shall ensure that provisions are made for safe arrival and departure of all children ~~that also allows for parent-staff interaction,~~ and a system is developed to ensure that children are released only as authorized by the parent ~~or legal guardian;~~
- ~~23- 21.~~ ~~Development of and~~ Shall develop and ensure compliance with a written policy and procedure for accountability when a normally unaccompanied child fails to arrive ~~for~~ as expected at the program;
- ~~24- 22.~~ ~~Development of~~ Shall develop a system to ensure the safety of children whose parents have agreed to allow them to leave the program without supervision, ~~with such system including~~ which must include, at a minimum:
- a. ~~Written permission from the parents allowing the operator to allow the children~~ a child to leave the program without supervision; and
  - b. Consistent sign-out procedures for released children;
- ~~25- 23.~~ ~~The reporting of~~ Shall report immediately, as a mandated reporter, any suspected child abuse or neglect as required by North Dakota Century Code chapter 50-25.1 and ~~development of~~ shall develop a written policy ~~for to address reporting by staff to handle this reporting~~ members;
- ~~26- 24.~~ ~~That there is, at all times when children are receiving care,~~ Shall ensure that a staff member is on duty at all sites who meets current certification requirements in basic cardiopulmonary resuscitation by the American heart association, American red cross, or other ~~similar~~ department-approved cardiopulmonary resuscitation training ~~programs~~ program and in a department-approved first-aid program ~~approved by the department,~~ except that substitute staff are exempted from this requirement;
- ~~27- 25.~~ ~~If~~ Shall meet the qualifications of the director set forth in section 75-03-11.1-08.1 if the operator of the ~~school-age~~ school-age child care ~~center~~ program is also the director; ~~the operator meets the qualifications of the director set forth in section 75-03-11.1-08.1;~~



~~28- 26. That caregivers and~~ Shall ensure that staff members responsible for caring for or teaching children under the age of eighteen have adult supervision in the school age child care center at all times are directly supervised by an adult staff member; and

~~29- 27. The operator of a facility shall~~ Shall report to the authorized agent within twenty-four hours to the county director or the county director's designee a:

- a. The death or serious accident or illness requiring hospitalization of a child while in the care of the facility program or attributable to care received in the facility program; and
- b. An injury to any child which occurs while the child is in the care of the program and which requires medical treatment;
- c. Poisonings or errors in the administration of medication;
- d. Closures or relocations of child care programs due to emergencies; and
- e. Fire that occurs or explosions that occur in or on the premises of the school-age child care program.

~~30. That carecheck information is made available to parents.~~

**History:** Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-03.1, ~~50-11.1-04(3)~~ 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11.1-08.1. Minimum qualifications of a ~~school age~~ school-age child care center program director.**

- ~~1. A school age child care center~~ The director shall be an adult of good mental and physical, cognitive, social, and emotional health, capable of and shall use mature judgment, and shall possess knowledge and experience in management and interpersonal relationships: when making decisions impacting the quality of child care;
- 2. The director shall possess knowledge and experience in management and interpersonal relationships;
- 3. The director shall meet hold at least one of the following qualifications, in addition to those set out in subsection 1:

- a. A bachelor's degree in the field of elementary education ~~with eight weeks of experience in a child care center or similar setting;~~
  - b. A bachelor's degree with at least twenty-four semester hours or thirty quarter hours in child development, child psychology, or directly related fields ~~directly related to child psychology, and with~~ at least six months of experience in a child care center program or similar setting;
  - c. An associate degree in the field of early childhood development ~~and with at least~~ six months of experience in a child care center program or similar setting;
  - d. A teaching certificate in elementary education with ~~twelve semester hours or fifteen quarter hours in child development, child psychology, early childhood education, or related fields~~ at least six months of experience in a child care program;
  - e. ~~Certification~~ A current certification as a child development associate or similar status ~~where such a local, state, or federal certification program exists, and with at least~~ one year of experience in a child care center program or similar setting;
  - f. A bachelor's degree with twelve semester hours or fifteen quarter hours in child development, child psychology, or directly related fields ~~directly related to child psychology, and with at least~~ one year of experience in a child care center program or similar setting; or
  - g. Certification ~~for~~ from a Montessori teacher training program with one year of experience in a Montessori school, ~~school-age~~ school-age child care center program, or similar setting, and at least twelve semester hours or fifteen quarter hours in child development, child psychology, early childhood education, or fields directly related thereto; and
  - h. ~~A high school diploma with three years of experience as a licensed school-age child care supervisor and three positive reference letters from parents whose children were in the supervisor's care; and~~
3. 4. The director shall certify ~~attendance at annual completion of~~ a minimum of thirteen hours of county-approved department-approved training related to child care ~~annually.~~

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC ~~50-11.1-04(2)~~ 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11.1-08.2. Duties of ~~school-age~~ school-age child care center program director.** The school-age school-age child care center program director



~~shall, coextensive, in collaboration with the school-age school-age child care center program operator, be responsible for shall:~~

1. ~~Program planning, supervision Plan, supervise, and activity conduct daily activities in the school-age child care program;~~
2. ~~Assisting the operator in maintaining Maintain enrollment, health, attendance, financial, and other related required records as required by this chapter;~~
3. ~~Scheduling, supervision Screen, schedule, supervise, and be responsible for the conduct of staff members while the staff members are on duty;~~
4. ~~Designating Designate a supervisor or onsite coordinator for each school-age school-age child care center program site; and~~
5. ~~Assisting the operator in efforts to improve the quality of care and the competence of caregivers. Perform other duties as delegated by the operator.~~
6. ~~The director shall be present at the school-age child care center at least sixty percent of the time that the center is open. If the operation has satellite sites, the director shall be present an aggregate of sixty percent of the combined time that the director is present at all sites.~~

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11.1-08.3. Minimum qualifications of school-age school-age child care center program supervisor or site coordinator.**

1. A supervisor or site coordinator shall meet hold at least one of the following qualifications:
  - a. An associate degree in the field of early childhood development or elementary education, or a secondary degree with an emphasis on middle school or junior high training;
  - b. ~~Certification~~ Current certification as a child development associate or similar status where such local, state, or federal certification program exists;
  - c. Certification for from a Montessori teacher training program; or
  - d. A high school diploma ~~and~~ or high school equivalency with at least one year of experience in a child care center program or similar setting; or.

- e. ~~A high school equivalency and one year of experience in a child care center or similar setting.~~
- 2. The supervisor shall demonstrate the ability to work with children and the willingness to increase skills and competence through experience, training, and supervision.
- 3. The supervisor shall be an adult of good ~~mental and physical~~, emotional, social, and cognitive health, ~~capable of and shall use~~ mature judgment; and shall possess knowledge and experience in management and interpersonal relationships when making decisions impacting the quality of child care. A supervisor must possess knowledge and experience in building and maintaining interpersonal relationships.
- 4. The supervisor ~~must be certified~~ shall meet current certification requirements in basic cardiopulmonary resuscitation ~~by that meets the requirements of~~ the American heart association, American red cross, or other ~~similar department-approved~~ cardiopulmonary resuscitation training programs approved by the department.
- 5. The supervisor shall be certified or trained in a department-approved program to provide first aid.
- 6. The supervisor shall certify ~~attendance at annual completion of~~ a minimum of thirteen hours of ~~county-approved~~ department-approved training related to child care annually.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04(2) 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11.1-08.4. Minimum qualifications for all ~~school-age~~ school-age child care center caregivers or group leaders program staff members responsible for caring for or teaching children.**

- 1. ~~Garegivers or group leaders~~ Each staff member shall be at least sixteen years of age and, shall be mentally, physically, and emotionally able to ~~provide adequate care for the children under supervision~~ an individual of good physical, cognitive, social, and emotional health, and shall use mature judgment when making decisions impacting the quality of child care.
- 2. Each ~~caregiver or group leader~~ staff member shall certify attendance ~~at county-approved~~ the staff member's own annual completion of department-approved training related to child care as set forth below:
  - a. ~~Garegivers or group leaders~~ Staff members working more than thirty to forty hours per week shall certify a minimum of thirteen hours of ~~county-approved~~ department-approved training annually;



- b. ~~Caregivers or group leaders~~ Staff members working fewer than thirty hours and at least twenty to thirty hours per week shall certify a minimum of eleven hours of ~~county-approved~~ department-approved training annually;
  - c. ~~Caregivers or group leaders~~ Staff members working fewer than twenty hours and at least ten to twenty hours per week shall certify a minimum of nine hours of ~~county-approved~~ department-approved training annually; and
  - d. ~~Caregivers or group leaders~~ Staff members working less fewer than ten hours per week shall certify a minimum of seven hours of ~~county-approved~~ department-approved training annually.
3. ~~Newly hired caregivers~~ The director shall have provide newly hired staff members with responsibilities for caring for or teaching children a two-day onsite orientation to the child care program during the first week of employment. The director shall document orientation of each staff member on an orientation certification form. The orientation must address the following:
- a. Emergency health, fire, and safety procedures ~~at for the school-age~~ school-age child care center program;
  - b. The importance of handwashing and sanitation procedures to reduce the spread of infection and disease among children and staff members;
  - c. Any special health or nutrition problems of the children assigned to the ~~caregiver~~ staff member;
  - d. Any special needs of the children assigned to the ~~caregiver~~ staff member;
  - e. The planned program of activities at the ~~school-age~~ school-age child care center program;
  - f. Rules and policies of the ~~school-age~~ school-age child care center program; and
  - g. Child abuse and neglect reporting laws.
4. ~~No caregiver or group leader may use or be under the influence of any alcohol or judgment-altering drugs while children are in care.~~ Staff members shall ensure safe care for children under supervision. For the school-age child, supervision means a staff member responsible for caring for or teaching children being available for assistance and care so that the child's health and safety are protected.

5. ~~No caregiver or group leader may at any time~~ A staff member may not place a child in an environment that would be harmful or dangerous to ~~a~~ the child's physical, cognitive, social, or emotional health.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC ~~50-11.1-04(2)~~ 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11.1-08.5. Minimum qualifications for volunteers.** If a volunteer is providing child care, volunteers the volunteer shall meet the qualifications of caregivers or group leaders, a staff member responsible for caring for or teaching children and shall receive orientation as needed for all assigned tasks.

**History:** Effective January 1, 1999; amended effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC ~~50-11.1-04(2)~~ 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11.1-08.6. Duties of school-age child care program supervisor.**  
The supervisor, in collaboration with the director, shall:

1. Communicate with parents about the individual needs of their children, including any special concerns the parents may have;
2. Plan daily and weekly schedules of activities and make those plans available to parents; and
3. Ensure that program policies are adhered to in the classes and groups assigned to the supervisor.

**History:** Effective October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11.1-09. Staffing and group size requirements.**

1. The number of staff members responsible for caring for or teaching children and ~~their use shall~~ responsibilities must reflect program requirements; and individual differences in the needs of the children enrolled, and shall may permit flexible groupings mixed groups, if necessary. Service personnel engaged in housekeeping and food preparation may not be counted in the child and to staff ratio for periods of time when they are so engaged in housekeeping or food preparation. ~~Children~~ The operator shall ensure that a child with special conditions needs requiring more than usual care and supervision ~~shall have~~ has adequate care and supervision ~~provided to them~~ without adversely affecting care provided to the remaining other children in the school age school-age child care center program.
2. Staffing requirements and maximum group size.



- a. ~~The operator of a school-age~~ school-age child care ~~center program~~ shall ensure that the ~~center program~~ is sufficiently staffed at all times to meet the ~~staffing requirements~~ child to staff ratios for children in attendance, and that no more ~~children~~ than the licensed capacity are served at one time. The ~~staffing requirements for caregivers or program staff~~ minimum ratio of staff members responsible for caring for or teaching children to children and maximum group size of children must be:
- (1) For one to fourteen children, one staff member; and
  - (2) For fifteen children or more, two staff members, with a maximum group size of thirty children.
  - (3) The provisions in this subsection relating to maximum group size ~~shall do not~~ apply to ~~school-age~~ school-age child care ~~center program~~ operators licensed prior to January 1, 1999, if such ~~those~~ operators are otherwise qualified to operate a ~~school-age~~ school-age child care ~~center program~~. Any ~~school-age~~ school-age child care ~~center program~~ operator who discontinues operation of the ~~school-age~~ school-age child care ~~center program~~ under a valid license, or who fails to renew such ~~the~~ license ~~upon expiration thereof~~ when it expires, shall will not thereafter be exempt from the requirements relating to maximum group size if the operator subsequently reapplies for a school-age child care program license. This exemption for operators licensed prior to January 1, 1999, will end on January 1, 2015, after which time all operators will be subject to the requirements of this subsection.
- b. ~~Staff members meeting the qualifications of center director, site coordinator, group leader, assistant group leader, or caregiver over eighteen years of age~~ A staff member may be counted in the required ratio only for the time ~~they are~~ the staff member is directly responsible for a group of children.
- c. ~~Caregivers~~ The director shall ensure that staff members responsible for caring for or teaching children and children under the age of eighteen shall have are supervised by an adult supervision at all times while in the school-age ~~center at all times~~ school-age child care ~~center at all times~~ program.
- d. ~~When more than eight children are taken off the premises, the children shall be accompanied by at least two staff members, one of whom is a qualified group leader or caregiver who is at least age eighteen years. When eight or fewer children are taken off the premises, the accompanying staff member must be a qualified group leader or caregiver who is at least age eighteen.~~

3. Children using the licensed facility program for a McGruff safe house, a block house, or a certified safe house program during an emergency ~~shall~~ are not be counted under this section.

**History:** Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-02.1, 50-11.1-04, 50-11.1-08, 54-12-20

**75-03-11.1-13. Minimum health requirements for all caregivers applicants, operators, and staff members.**

1. ~~Each operator or caregiver shall complete a health self-certification form certifying that the operator or caregiver does not have health problems that would interfere with the person's functioning as a caregiver or that would be detrimental to the health of the children or other staff. If the operator adds or replaces a caregiver after the licensure process is complete, the operator must submit a self-certification form completed by the new caregiver to the county within five working days of the caregiver's first workday. If the physical, cognitive, social, or emotional health capabilities of an applicant, operator, or staff member appear questionable, the department may require the individual to present evidence of the individual's ability to provide the required care based on a formal evaluation. The department is not responsible for the costs of any required evaluation.~~
2. ~~Each operator or caregiver shall furnish documentation of a negative Mantoux tuberculosis test prior to each licensure or employment, and every two years thereafter. If the operator adds or replaces a caregiver after the licensure process is complete, the caregiver shall furnish documentation of a negative Mantoux tuberculosis test before the first day of employment. Substitute staff, substituting for less than thirty-two hours per month, are exempted from this requirement. A school-age child care center operator who uses an untested emergency designee may not be found in violation of this provision. A staff member may not use or be under the influence of any illegal drugs or alcoholic beverages while caring for children.~~

**History:** Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-04(2) 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11.1-15. Minimum standards for provision of transportation.**

1. The operator shall establish a written policy governing the transportation of children to and from the ~~school-age~~ school-age child care center

~~program, if the school-age school-age child care center program~~ provides transportation. This policy must specify who is to provide transportation and how parental permission is to be obtained for activities which occur outside the ~~school-age school-age child care center program~~. If the ~~school-age school-age child care center program~~ provides transportation, the operator shall inform the parents of any insurance coverage on the vehicles. Any vehicle used for transporting children must be in safe operating condition and in compliance with state and local laws.

2. When transportation is provided by a ~~school-age school-age child care center program~~, children must be protected by adequate staff ~~member~~ supervision, safety precautions, and liability ~~and medical~~ insurance.
  - a. ~~Child and staff ratios~~ Staffing requirements must be maintained to assure the safety of the children while being transported. ~~The department requires one busdriver per twenty children and one additional individual for twenty-one children or more.~~
  - b. A child may not be left unattended in a vehicle.
3. Children must be instructed in safe transportation conduct as appropriate to their age and stage of development.
4. The driver must be at least eighteen years of age and shall comply with all relevant federal, state, and local laws, including child restraint system laws.

**History:** Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

#### **75-03-11.1-16. Minimum emergency evacuation and disaster plan.**

1. ~~Each school-age child care center must have an approved and posted~~ The operator shall establish and post an emergency disaster plan for the safety of the children in care. ~~Written~~ The operator shall develop written disaster plans must be developed in cooperation with the authorities. ~~local emergency management agencies. The plan must include:~~
  - a. Emergency procedures, including the availability of emergency food, water, and first-aid supplies;
  - b. What will be done if parents are unable to pick up their child as a result of an emergency; and



- ~~c. What will be done if the school-age child care program has to be relocated or must close as a result of the emergency.~~
2. Fire and emergency evacuation drills must be performed in accordance with the ~~local fire department's~~ state fire marshal's guidelines.

**History:** Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

#### **75-03-11.1-17. Fire inspections.**

1. ~~Annual~~ The operator shall ensure that annual fire inspections ~~must be are~~ completed by local or state fire authorities. The operator shall correct or have corrected any code violations noted by the fire inspector and shall file reports of the inspections and any corrections with the county licensing agency authorized agent.
2. ~~The school-age operator shall ensure that the school-age child care center must be~~ program is equipped with sufficient smoke detectors and fire extinguishers, as recommended by the local fire department or state fire marshal.
3. ~~The school-age operator shall ensure that the school-age child care center shall provide~~ program provides:
  - a. ~~The local~~ fire inspector's written statement of compliance with the local fire code, if there is one; or
  - b. ~~The local~~ fire inspector's written statement that the ~~school-age school-age~~ child care center program has been inspected and that the inspector is satisfied that the ~~school-age school-age~~ child care center program meets minimum fire and safety standards; ~~or,~~
  - ~~c. A written statement from an appropriate fire official that the school age child care center meets minimum fire and safety standards adopted by the state fire marshal.~~

**History:** Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-11.1-18. Minimum sanitation and safety requirements.**

1. ~~In school age child care centers where meals are prepared, The~~ operator shall ensure that the state department of health ~~shall conduct~~

conducts an annual inspection. If only snacks or occasional cooking projects are prepared, a state department of health inspection is not required. The operator shall correct any code violations noted by the health inspector and shall file reports of the inspections and corrections made with the authorized agent.

2. The school-age operator shall ensure that the school-age child care center's program's building, grounds, and equipment must be are located, cleaned, and maintained to protect the health and safety of children. Routine The operator shall establish routine maintenance and cleaning procedures must be established to protect the health of the children and the caregivers staff members.
3. The school-age operator shall ensure that the school-age child care center program ground areas must be are free from accumulations of refuse, standing water, unprotected wells, debris, flammable material, and other health and safety hazards.
4. Exterior The operator shall ensure that exterior play areas in close proximity to busy streets and other unsafe areas must be are contained; or fenced, or have natural barriers to restrict children from those unsafe areas. Outdoor play areas must be inspected daily for hazards and necessary maintenance.
5. Garbage must be The operator shall ensure that garbage stored outside is kept away from areas used by children and is kept in containers with tight lids, made of noncombustible materials. Open burning is not permitted. The operator shall keep indoor garbage in covered containers. The operator may allow paper waste to be kept in open waste containers.
6. Wading The operator shall ensure that wading pools used by the school-age school-age child care center must be program are strictly supervised and must be are emptied and, cleaned, and sanitized daily.
7. All The operator shall ensure that all swimming pools must be are approved annually by the local health unit.
8. All school-age The operator shall ensure that all school-age child care center program buildings erected before January 1, 1970, which contain painted surfaces in a peeling, flaking, chipped, or chewed condition in any area where children may be present, must have these painted surfaces repainted or must shall submit evidence that the surfaces paints or finishes do not contain hazardous levels of lead-bearing substances. For the purposes of this chapter, "hazardous levels of lead-bearing substances" means any paint, varnish, lacquer, putty, plaster, or similar coating of structural material which contains lead or its compounds in excess of seven-tenths of one milligram per square centimeter, or in excess of five-tenths of one percent in the

dried film or coating, when measured by a lead-detecting instrument approved by the state department of health.

9. ~~Indoor~~ The operator shall ensure that indoor and outdoor equipment, toys, and supplies must be are safe, strong, nontoxic, and in good repair. All The operator shall ensure that all toys must be easily cleanable and must be cleaned and sanitized on a routine basis are kept clean and in a sanitary condition. Books and other toys that are not readily cleanable must be sanitized as much as possible without damaging the integrity or educational value of the item.
10. ~~Indoor~~ The operator shall ensure that indoor floors and steps may are not be slippery or and do not have splinters. Steps The operator shall ensure that steps and walkways must be are kept free from accumulations of water, ice, snow, or debris.
11. ~~Elevated~~ The operator shall ensure that elevated areas such as, including stairs or and porches, must have railings and safety gates where necessary to prevent falls.
12. ~~If the school-age~~ school-age child care center program is providing care to children in wheelchairs, the ~~center operator~~ shall provide doors of sufficient width and construction to accommodate any children in wheelchairs who are receiving care.
13. ~~Exit~~ The operator shall ensure that exit doorways and pathways may are not be blocked.
14. ~~Light~~ The operator shall ensure that light bulbs in areas used by children must be are properly shielded or shatterproof.
15. ~~Combustible~~ The operator shall ensure that combustible materials must be are kept away from light bulbs and other heat sources.
16. ~~There must be~~ The operator shall ensure adequate heating, ventilation, humidity, and lighting for the comfort and protection of the health of the children. All heating devices must be approved by local fire authorities. During the heating season when the school-age school-age child care center program is occupied by children, the room temperature must not be less than sixty-eight sixty-five degrees Fahrenheit [20 18 degrees Celsius] and not more than seventy-four seventy-five degrees Fahrenheit [23.33 24 degrees Celsius] measured three feet [91.44 centimeters] above the floor. All heating devices must be approved by the local fire authorities.
17. ~~School-age child care center~~ The operator shall ensure that school-age child care program bathroom lavatories sinks, toilets, tables, chairs, and floors must be are cleaned daily. Cots and mats must be individually labeled designated and cleaned and sanitized at least weekly. If



different children use the same cots or mats, the cots or mats must be cleaned thoroughly and sanitized between each use. The operator shall provide separate storage for personal blankets or coverings.

18. ~~Personal~~ The operator shall ensure that personal items including combs and toothbrushes ~~must be~~ are individually identified and stored in a sanitary manner.
19. ~~Caregivers~~ Staff members and children shall wash their hands, according to recommendations by the federal centers for disease control and prevention, before preparing or serving meals, after nose wiping, after using toilet facilities, and after any other procedure that may involve contact with bodily fluids. Hand soap and paper towels, sanitary hand-drying equipment, or single-use cloth towels must be available at each lavatory sink. Clean towels must be provided daily.
20. ~~Potential~~ The operator shall ensure that potential hazards, such as guns, household cleaning chemicals, uninsulated wires, medicines, poisonous plants, and open stairways may are not be accessible to young children. The operator shall keep guns and ammunition in locked storage, each separate from the other, or shall use trigger locks. The operator shall ensure other weapons and dangerous sporting equipment, such as bows and arrows, are not accessible to children.
21. Water supply standards:
  - a. ~~The school-age operator shall ensure that the school-age child care center must have~~ program has a drinking supply from an approved community water system or from a source tested and approved annually by the state department of health;
  - b. Drinking water must be easily accessible to the children and must be provided by either an angle-jet drinking fountain with mouthguard or by a running water supply with individual, single-serve drinking cups; and
  - c. ~~The school-age school-age child care center program must have hot and cold running water. Hot water heaters must be turned down or there must be a tempering valve or antiscalding device on the faucets used by children so that the temperature of hot water supplied to lavatories does not exceed one hundred twenty degrees Fahrenheit [49.2 degrees Celsius].~~
22. Toilet and ~~lavatory~~ sink facilities:
  - a. ~~Toilet~~ The operator shall provide toilet and lavatory sink facilities must be provided and must be convenient which are easily accessible to the areas used by the children and staff members;

- b. ~~Toilet and lavatory facilities must meet requirements of the state department of health;~~
- c. ~~Toilets must be located in rooms separate from those used for cooking, eating, and sleeping;~~
- d. ~~c. A minimum of one lavatory sink and one flush toilet must be provided for each fifteen children;~~
- e. ~~d. Separate The operator shall provide separate restrooms must be provided for boys and girls six years of age and over, and shall ensure that partitions must be are installed to separate toilets in these restrooms;~~
- f. ~~e. At The operator shall provide at least one handwashing lavatory must be provided sink per toilet room facility; and~~
- g. ~~Sanitary hand-drying equipment, individual cloth, or paper towels must be provided near handwashing lavatories; and~~
- h. ~~f. Safe The operator shall provide safe step stools must be provided to allow children to use standard-size toilets and lavatories to be used by the children sinks or the operator shall ensure the availability of child-size toilets and lavatories must be provided sinks.~~

23. ~~Sewage and wastewater disposal:~~

- a. ~~A school age child care center shall meet the requirements of the state plumbing code as contained in North Dakota Administrative Code article 62-03; and~~
- b. ~~Any school age The operator of a school-age child care center program not on a municipal or public water supply or wastewater disposal system shall have its ensure the school-age child care program's sewage and wastewater system has been approved by the state department of health.~~

24. Laundry:

- a. ~~If the school age school-age child care center program provides laundry service for common use linens, towels, or blankets, it shall have adequate space and equipment for safe and effective operation;~~
- b. ~~Soiled The operator shall ensure that soiled linens must be are placed in closed containers or hampers during storage and transportation;~~

- c. ~~In~~ The operator shall ensure that in all new or extensively remodeled school-age ~~school-age~~ child care ~~centers~~ programs, the handling, sorting, or washing ~~or of~~ soiled linen ~~linens~~ or blankets ~~must take~~ takes place in a designated area that is separated by a permanent partition from food preparation, serving, and kitchen areas;
  - d. ~~In~~ The operator shall ensure that in an existing school-age ~~school-age~~ child care ~~centers~~ program where physical separation of laundry and kitchen areas is impractical, procedures ~~must be~~ are developed to prohibit the washing or transportation of laundry while meals are being prepared or served;
  - e. ~~Sorting~~ The operator shall ensure that sorting of laundry ~~may is~~ not be allowed in food preparation, serving, or kitchen areas;
  - f. If the ~~school-age~~ school-age child care ~~center~~ program provides laundry service for common use linens, towels, or blankets, or if different children's clothing, towels, or blankets are laundered together, the water temperature must be greater than one hundred ~~seventy forty~~ degrees Fahrenheit [~~77.2~~ 60 degrees Celsius]; and
  - g. ~~If~~ The operator shall ensure that if the water temperature is less than one hundred ~~seventy forty~~ degrees Fahrenheit [~~77.2~~ 60 degrees Celsius], ~~then bleach must be~~ or sanitizer is used in the laundry process during the rinse cycle ~~to achieve fifty parts per million of available hypochlorite at~~ or the program shall use a clothes dryer that reaches a temperature of at least ~~seventy-five~~ one hundred forty degrees Fahrenheit [~~24~~ 60 degrees Celsius].
25. ~~School-age child care centers~~ The operator shall take steps to keep the facility school-age child care program free of insects and rodents. Chemicals for insect and rodent control may not be applied in areas accessible to children when children are present in the facility school-age child care program. Insect repellent may be applied outdoors on children with written parental permission.
26. ~~All pets present in the school-age child care center must be properly immunized, restricted, and maintained. Nondomestic animals, such as skunks, opossum, or raccoon, whether or not regarded as pets, may not be present in the school-age child care center. Pets may not be allowed in the kitchen or eating area during meal preparation or meals.~~
27. ~~Smoking is not permitted in any school-age child care center at any time during which a child who receives early childhood services from that school-age child care center is present and receiving care. Pets and animals:~~



- a. The operator shall ensure that only cats, dogs, and small pets that are contained in an aquarium or other approved enclosed container are present in areas occupied by children. Wire cages are not approved containers. Other indoor pets and animals must be restricted by a solid barrier and must not be accessible to children. The department may restrict any pet or animal from the premises that may pose a risk to children.
- b. The operator shall ensure that animals are maintained in good health and appropriately immunized. Pet immunizations must be documented with a current certificate from a veterinarian.
- c. The operator shall ensure parents are aware of the presence of pets and animals in the school-age child care program.
- d. The operator shall notify parents immediately if a child is bitten or scratched and skin is broken.
- e. A staff member responsible for caring for or teaching children shall supervise closely all contact between pets or animals and children. The staff member shall remove the pet or animal immediately if the pet or animal shows signs of distress or the child shows signs of treating the pet or animal inappropriately.
- f. The operator shall ensure that pets, pet feeding dishes, cages, and litter boxes are not present in any food preparation, food storage, or serving areas. The operator shall ensure that pet and animal feeding dishes and litter boxes are not placed in areas accessible to children.
- g. The operator shall ensure that indoor and outdoor areas accessible to children are free of animal excrement.
- h. The operator shall ensure that the school-age child care program is in compliance with all applicable state and local ordinances regarding the number, type, and health status of pets or animals.

**History:** Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, ~~50-11.1-02.2~~, 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-11.1-19. Minimum requirements regarding space and lighting.**

- 1. Each ~~school-age~~ school-age child care center program shall provide adequate indoor and outdoor space for the daily activities of all children in attendance within the licensed capacity of the school-age child care program.

2. ~~The school-age child care center shall provide adequate space, indoors and out, for the daily activities of the children. This Adequate space~~ must include a minimum of thirty-five square feet [3.25 square meters] of space per child indoors and a minimum of seventy-five square feet [6.97 square meters] of play space per child outdoors. Indoor space considered must exclude bathrooms, pantries, passageways leading to outdoor exits, areas occupied by furniture or appliances that children should not play on or under, and space children are not permitted to occupy. If available outdoor play space does not accommodate the licensed capacity of the ~~school-age~~ school-age child care center program at one time, the total appropriate outdoor space available must not be less than what is required for the number of children in the largest class or group of the program multiplied by seventy-five square feet [6.96 square meters]. The operator shall prepare a written schedule of outdoor playtime which limits use of the play area to its capacity, giving every child an opportunity to play outdoors daily.
3. The ~~school-age~~ school-age child care center program must be properly lighted. ~~The following technical requirements must be met:~~
  - a. ~~Sixty-five foot-candles of light for all general use and play areas;~~
  - b. ~~Twenty-five foot-candles of light for all bathrooms;~~
  - c. ~~Fifty foot-candles of light for any kitchen, laundry, and office areas; and~~
  - d. ~~Fifteen foot-candles of light for corridors and storage areas.~~
  - e. If the lighting of the ~~school-age~~ school-age child care center program appears questionable, the department may require the operator to obtain additional lights so that a minimum of sixty-five foot-candles of light is used in the areas generally used for children's activities.

**History:** Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

#### **75-03-11.1-20. Program requirements.**

1. The ~~school-age~~ school-age child care center program operator shall have a program plan of daily individual or small group activities appropriate to the ages and needs of the children in the ~~school-age~~ school-age child care center program. The program plan must include activities which foster sound social, ~~intellectual~~ cognitive, emotional, and physical growth, and the plan must be developed with discussion and consultation with parents as to their children's needs consideration

of parental input. A written daily routine including mealtimes, rest times, planned developmentally appropriate activities, free play, and outside time must be available to parents. The daily routine must be flexible enough to allow for spontaneous activity as appropriate.

2. The program plan must be flexible and subject to modification for individual child differences.
3. The program plan must be written and varied ~~in order~~ to promote the physical and emotional well-being of the children, to encourage the acquisition of information and knowledge, and to foster the development of language skills, concepts, self-discipline, and problem-solving activities. The program plan must describe how the activities planned meet the children's developmental needs, including the special needs of children ~~in the school-age child care center who are multilingual or disabled~~. The written program plan must be made available to parents.
4. The program plan must include firsthand experiences for children to learn about the world in which they live.
5. Learning experiences must be conducted in consultation with parents ~~in order~~ to ensure harmony with the lifestyle and cultural background of the children.
6. The program plan must provide a balance of quiet and active indoor and outdoor group and individual activities. A time for supervised child-initiated and self-selected activity must be established.
7. If the children are allowed to assist in any food preparation, the activity must be limited to use of equipment and appliances that do not present a safety hazard. Children may not be allowed in the kitchen or laundry area unsupervised.
8. A variety of games, toys, books, crafts, and other activities and materials must be provided to enhance the child's intellectual and social development and to broaden the child's life experience. Each ~~school-age school-age child care center shall~~ program must have enough play materials and equipment so that at any one time, each child in attendance can be ~~individually~~ individually or as a group.
9. The cultural diversity of the children must be reflected in the program plan through incorporation of their language, food, celebration, and lifestyles, if ~~appropriate~~ appropriate.
10. Equipment and furniture must be durable and safe, and must be appropriately adapted for children's use.



11. Sufficient space accessible to children must be provided for each child's personal belongings.
12. The ~~school-age~~ school-age child care ~~center~~ program shall supplement, augment, and reinforce the child's activities at home and school.
13. At the time of enrollment, the ~~school-age child care center staff~~ director or supervisor shall discuss with the parents the children's habits, activities, and schedules while at home and in school ~~their and the~~ parents' special concerns about their past and future behavior and development. The schedule and activities must be designed to complement and supplement the children's experiences at home and in school.
14. Staff members responsible for caring for or teaching children shall encourage parents to visit the facility, observe, and participate in the care of their children.
15. The ~~school-age child care center operator~~ director or supervisor shall contact parents to ~~exchange information concerning the child and the child care program as well as~~ offer them meaningful opportunities to participate in general program policymaking.
16. ~~Personal~~ Staff members shall stress hygiene practices appropriate for a child's age and development must be stressed.
17. The ~~school-age child care center operator~~ director or supervisor shall contact parents to exchange information concerning the child and any concerns about the health, development, or behavior of the child. These concerns must be communicated to the parent promptly and directly.
18. Each child's cultural and ethnic background and primary language or dialect must be respected by the ~~caregivers~~ staff members.
19. Each ~~school-age~~ school-age child care ~~center~~ program shall have a designated area where a child can sit quietly or lie down to rest. ~~There must be sufficient cots or sleeping mats so that each child in attendance may have an individual napping space. The floor may be used only when carpeted or padded, warm, and free from drafts, and when individual blankets or coverings are used. Napping schedules must be set for children according to their ages and needs. For children unable to sleep, time and space for quiet play must be available.~~

**History:** Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-11.1-21. Minimum standards for food and nutrition.**

1. When the operator is responsible for providing food to children, the food supplied must meet United States department of agriculture standards, and must be properly prepared, sufficient in amount, nutritious, varied according to diets of the children enrolled, and served at appropriate hours. Food that is prepared, served, or stored in a ~~school-age~~ school-age child care center program must be treated in a sanitary and safe manner with sanitary and safe equipment.
2. ~~Safe drinking water must be accessible to the children at all times.~~
3. When parents bring sack lunches for their children, the operator ~~may~~ shall supplement lunches when necessary to provide nutritious and sufficient amounts of food for children, and shall provide adequate and appropriate refrigeration and storage as required.
4. ~~If the services are available free of charge, a dietician or other food service professional must be used as a consultant.~~
5. ~~3. Children must be served a nutritious morning and afternoon snack, and if the parent does not provide a sack lunch, a nourishing meal:~~
  - a. ~~Children in care for more than three hours shall receive either a snack or meal, whichever is appropriate to that time of day.~~
  - b. ~~Children~~ The operator shall serve nutritious meals to children in care during any normal mealtime hour ~~shall be served food appropriate for that time of day; and.~~
  - c. ~~Children who are present for more than four hours or come directly to the center from a morning kindergarten class shall receive a meal.~~
6. ~~4. When the operator is responsible for providing food to children, menus must be prepared on a weekly basis and made available to the parents, the department, or~~ authorized agent, and other appropriate individuals.
7. ~~5. Information~~ The operator shall consider information provided by the children's parents as to their ~~the children's~~ the children's eating habits, food preferences, or special needs ~~must be considered in~~ creating the feeding schedules and in the tailoring of menus.
8. ~~6. Children must be served~~ The operator shall serve snacks and meals to children in a manner commensurate with their age, using appropriate foods, portions, dishes, and eating utensils.
9. ~~7. Children must be encouraged~~ The operator or staff members may encourage children to eat the food served, but ~~shall~~ the operator or staff

members may not be subjected to coercion or force-feeding coerce or force-feed children.

**History:** Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

#### **75-03-11.1-22. Records.**

1. ~~A~~ The operator shall keep a copy of this chapter must be kept on the premises of the school-age child care program and all satellite sites and shall make it available to staff members at all times.
2. The ~~school-age child care center~~ operator shall maintain the following records:
  - a. The child's full name, ~~birthdate~~ birth date, and current home address;
  - b. ~~Names~~ Legal names of the child's parents ~~or legal guardian~~, and the business and home ~~personal~~ telephone numbers where ~~those individuals may they can~~ be reached;
  - c. Names and telephone numbers of individuals who may assume responsibility for the child if the individual legally responsible for the child ~~may not~~ cannot be reached immediately in an emergency;
  - d. A written statement from the parents ~~or legal guardian~~ authorizing emergency medical care;
  - e. Names and telephone numbers of individuals authorized to take the child from the ~~school-age~~ school-age child care center program; and
  - f. ~~Verification that the child has received all immunizations appropriate for the child's age, as prescribed by the state department of health, unless the child is a drop-in; and~~
  - ~~g.~~ A current health assessment or a health assessment statement completed by the parent, obtained at the time of initial enrollment of the child, ~~that which~~ must indicate any special precautions for diet, medication, or activity; ~~must serve as evidence that a child is physically able to take part in the child care program, and must be completed annually. This assessment must be completed annually.~~
3. ~~All~~ The operator shall record and verify the identification of the child through official documentation such as a certified birth certificate.



certified school records, passport, or any other documentary evidence the operator considers appropriate proof of identity and shall comply with North Dakota Century Code section 12-60-26.

4. The operator shall ensure that all records, photographs, and information maintained with respect to children receiving child care services must be are kept confidential, and that access must be is limited to staff members, the parents, or legal guardian of each child, and to the following, unless protected by law:
  - a. ~~Authorized county agency~~ The authorized agent and department representatives;
  - b. Individuals having a definite interest in the well-being of the child concerned and who, in the judgment of the department, are in a position to serve the child's interests should that be necessary; and
  - c. Individuals who possess written authorization from the child's parent or legal guardian. The school-age school-age child care center program shall have a release of information form available and shall have the form signed prior to the release of information.

**History:** Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11.1-23. Discipline - Punishment prohibited.** Disregard of any of the following disciplinary rules or disciplinary measure resulting in physical or emotional injury, neglect, or abuse to any child is grounds for license denial or revocation.

1. The school-age school-age child care center program must have a written policy regarding the discipline of children ~~that must be interpreted to.~~ The operator shall provide the policy to, and discuss the policy with, the staff members before the school-age school-age child care center program begins operation or before staff members begin working with children.
2. Discipline must be constructive or educational in nature and may include diversion, separation from the problem situation, talking with the child about the situation, ~~praise for~~ praising appropriate behavior, ~~and or~~ gentle physical restraint, such as holding. ~~Children~~ A child may not be subjected to physical harm, fear, or humiliation.
3. Authority to discipline may not be delegated to ~~or children nor may~~ discipline be accomplished administered by children.

4. Separation, when used as discipline, must be brief and appropriate to the child's age development and circumstances. ~~Any~~ The child separated must be in a safe, lighted, well-ventilated room within sight or hearing range of an adult a staff member responsible for caring for or teaching children. A child staff member may not be isolated isolate a child in a locked room or closet.
5. A child may not be physically punished for lapses in toilet training.
6. ~~When addressing a child, or while in the presence of a child, staff members may not~~ A staff member may not use verbal abuse or make derogatory remarks about the a child, the or a child's family, race, or religion nor use profane, threatening, unduly loud, or otherwise abusive language when addressing a child or in the presence of a child.
7. A staff member may not use profane, threatening, unduly loud, or abusive language in the presence of a child.
8. A child staff member may not be force-fed force-feed a child or coerce a child to eat, unless medically prescribed and administered under a physician's medical provider's care.
8. 9. Deprivation A staff member may not use deprivation of meals may not be used or snacks as a form of discipline or punishment.
9. 10. A child may not be punched, spanked, shaken, pinched, bitten, roughly handled, or struck by any staff member or any other adult in the school age child care center staff member or any other adult at the school-age child care program may not kick, punch, spank, shake, pinch, bite, roughly handle, strike, mechanically restrain, or physically maltreat a child.
11. A staff member may not force a child to ingest substances that would cause pain or discomfort, for example, placing soap in a child's mouth to deter the child from biting other children.
12. A staff member may not withhold active play from children as a means of discipline or punishment, beyond a brief period of separation.

**History:** Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-01, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08

**75-03-11.1-24. Specialized types of care and minimum requirements therefor.**

1. **Night care:**

- a. ~~Any school-age~~ school-age child care center program offering night care shall provide program modifications for the ~~special~~ needs of children and their parents during the night;
- b. In consultation with parents, ~~special~~ attention must be given by the ~~caregiver~~ staff member responsible for caring for or teaching children to provide for a transition into this type of care appropriate to the child's ~~emotional~~ needs;
- c. ~~When practical;~~ The operator shall encourage parents to leave their children shall be left for in care and picked or pick them up before and after their normal sleeping period when practical, to ensure minimal disturbance of the child during sleep, but with consideration must be given to the parent's work schedule;
- d. ~~Comfortable~~ The operator shall ensure that comfortable beds and cots, complete with a mattress or pad, must be are available and shall ensure:
  - (1) Pillows and mattresses ~~must~~ have clean coverings;
  - (2) Sheets and pillowcases ~~must be~~ are changed as often as necessary for cleanliness and hygiene, but ~~not less than at least weekly. The operator shall ensure that if beds are used by different children, sheets and pillowcases are laundered before use by other children; and~~
  - (3) ~~If beds are used by different children, sheets and pillowcases must be laundered before use by other children; and~~
  - (4) Each bed or cot ~~must have~~ has sufficient blankets available;
- e. ~~The school-age~~ school-age child care center operator program shall require each child in night care to have night clothing and a toothbrush marked for identification; and
- f. ~~During~~ The operator shall ensure that during sleeping hours, ~~the staff shall be members responsible for caring for or teaching children are awake and within listening distance in order hearing range to provide for the needs of children and to respond to an emergency.~~

**2. Drop-in ~~school-age~~ school-age child care centers.**

- a. If a ~~school-age~~ school-age child care center program serves drop-in children, it shall be sufficiently staffed to effectively handle admission records and explain the policies and procedures of the program; and to maintain the proper staff member to child ratio.



- b. ~~The operator shall ensure that the program must reflect~~ reflects the special individual needs of the children who are provided drop-in service; care.
  - c. ~~Admission~~ The operator shall ensure that admission records must comply with all enrollment requirements contained in section 75-03-11.1-22, except the immunization record requirement;.
  - d. ~~Admittance~~ The operator shall ensure that admittance procedures must provide for a period of individual attention for the child in order to acquaint the child with the school-age school-age child care center program, its equipment, and the staff; and members.
  - e. ~~A school-age school-age child care center program may not receive drop-in care or part-time children who, when added to the children in regular attendance, cause the school-age school-age child care center program to exceed the total number of children for which the school-age school-age child care center program is licensed.~~
3. **Drop-in school-age child care programs.** An operator shall ensure that a school-age child care program serving only drop-in care children complies with this chapter, but is exempt from the following provisions:
- a. Subsections 12, 14, and 15 of section 75-03-11.1-20; subdivision f of subsection 1 of section 75-03-11.1-22; and subsection 1 of section 75-03-11.1-25; and
  - b. A school-age child care program serving only drop-in children is exempt from the outdoor space requirements.

**History:** Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**75-03-11.1-25. Minimum requirements for care of children a child with special needs.** ~~When children~~ An operator shall make appropriate accommodations, as required by the Americans with Disabilities Act, to meet the needs of a child with special needs are admitted, there must be appropriate provisions to meet those needs. The school-age child care center operator shall document how receive documentation of the child's special needs may be met from the parent upon the child's enrollment.

- 1. ~~When children~~ a child with special needs are is admitted, the school age child care center director or supervisor shall consult with the child's parents, and with the parent's permission, the child's source of professional health care, or, when appropriate, other health and professional consultants to gain an understanding of the child's individual needs. The operator shall receive a written health care plan

from the child's medical provider or parent with information related to the child's special needs, such as a description of the special needs, definition of the diagnosis, and general information for emergency and required care such as usual medication and procedures.

2. Garegivers The operator shall ensure staff members responsible for caring for or teaching children receive proper instructions as to the nature of the child's disability special needs and potential for growth and development.
3. ~~If the nature of the special needs or the number of children with special needs warrants added care, the school age child care center shall add sufficient staff and equipment as deemed necessary by the department to compensate for those needs.~~

**History:** Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04

**75-03-11.1-26. Minimum provisions regarding emergency care for children.**

4. ~~The school-age school-age child care center program~~ shall have written plans to respond to illness, accidents, and emergencies, including burns, serious injury, and ingestion of poison. ~~Parents~~ The operator shall ensure that parents of enrollees must be enrolled children are advised of these plans. Plans must require:
  1. Establish emergency response procedures;
  - a. ~~2. The conspicuous~~ Provide accessible posting of emergency response procedures, ~~with all staff members receiving and training for all staff members~~ concerning such those emergency procedures;
  3. Require the availability of at least one working flashlight;
  - b. ~~4. At~~ Require at least one ~~state department of health-approved department-approved~~ first-aid kit be maintained and kept in each major activity area, inaccessible to children, yet readily accessible to staff members at all times;
  - e. ~~5. A~~ Provide a working telephone be immediately accessible to staff members with a list of emergency telephone numbers conspicuously ~~posted adjacent to the telephone;~~
  - d. ~~6. The school-age child care center~~ Require that the program inform parents in writing of any first aid administered to their child within

twenty-four hours of the incident and immediately notify parents of any injury which requires emergency care beyond first aid; and require an

e. ~~That each injury report to be made a part of the child's record;~~

f. 7. The school age child care center implement infection control measures to prevent the spread of communicable diseases and follow rules and recommendations set by the division of communicable disease control of the state department of health relating to serious illnesses, contagious diseases, and reportable diseases; Require a plan for responding to minor illnesses and minor accidents when children are in the care of the school-age child care program;

g. ~~That when health policies of the school age child care center allow ill children to be admitted or to remain in the school age child care center, medical consultation must be available regarding special care and medication;~~

h. 8. The following procedures where children in the school age child care center require medication:

(1) ~~Written~~ Require written permission to dispense medication ~~must and require proper instructions for the administration of medication be obtained from the parent; and proper instructions for the administration of the medicine must be given by the parent or physician; of a child in the school-age child care program who requires medication;~~

(2) a. ~~Any medication~~ Medication prescribed by a physician ~~medical provider must be accompanied by the physician's medical provider's written instructions as to its dosage and storage, and labeled with the child's name and dated; date.~~

(3) b. ~~A~~ The program shall keep a written record of the administration of medication, including over-the-counter medication, ~~to for each child must be kept.~~ Records must include the date and time of each administration, the dosage, the name of the staff member administering the medication, and the name of the child;.

(4) ~~Completed~~ The program shall include completed medication records ~~must be included in the child's record; and.~~

(5) c. ~~Medications~~ Medication must be stored in an area inaccessible to children, and ~~medications~~ medication stored in a refrigerator must be stored collectively in a spillproof container;.

i. 9. A Require a supervised, temporary isolation area be designated for a child who is too ill to remain in the ~~group~~ school-age child care program, or who has an infectious or contagious disease, with the



following procedures being followed when those signs or symptoms are observed:

- (1) ~~a.~~ a. Parents ~~shall be~~ are notified immediately and asked to pick up their child; and
  - (2) ~~b.~~ b. First aid ~~must be~~ is provided and medical care sought, as necessary;
- j. ~~10.~~ 10. ~~Children~~ Establish and implement practices in accordance with guidance obtained through consultation with local or state department of health authorities regarding the exclusion and return of children with infectious or communicable conditions be excluded from the school age child care center until the condition may no longer be transmitted; and. The program may obtain this guidance regarding exclusion and return to the school age child care center be obtained through consultation with local and state health department authorities directly or through current published material regarding exclusion and return to the school-age child care program;
- k. ~~11.~~ 11. ~~That provisions~~ Identify a source of emergency health services readily available to the school-age child care program, including:
- ~~a.~~ a. A prearranged plan for emergency medical care in which parents of enrolled children are advised of the arrangement; and
  - ~~b.~~ b. Provisions for emergency transportation be made, specifically that when a child is to be brought to another place for emergency care, the child be accompanied by an adult who staff member responsible for caring for or teaching children shall remain with the child until medical personnel assume the responsibility for the child's care and until the parent or legal guardian arrives is notified; and
- l. ~~12.~~ 12. ~~That~~ Require information be provided to parents, as needed, concerning child health and social services available in the community, ~~and that there be assistance for parents in obtaining the services.~~

**History:** Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01

#### **75-03-11.1-27. Effect of conviction on licensure and employment.**

- 1. ~~A school age child care center~~ An applicant, operator, director, or supervisor may not be, and a school age school-age child care center program may not employ or allow, in any capacity that involves or permits contact between the employee emergency designee, substitute

staff member, or staff member and any child cared for by the school age school-age child care center program, an individual operator, emergency designee, substitute staff member, director, supervisor, or staff member who has been found guilty of, pled guilty to, or pled no contest to:

- a. An offense described in North Dakota Century Code chapters chapter 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; or 12.1-18, kidnapping; or 12.1-27.2, sexual performances by children; or in North Dakota Century Code sections section 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-07, sexual assault; 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or an 14-09-22, abuse or neglect of a child;
- b. An offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes offenses identified in subdivision a; or
- b. c. An offense, other than an offense identified in subdivision a or b, if the department in the case of a school-age school-age child care center program applicant, operator, director, or supervisor, or the school-age school-age child care center program operator in the case of an employee emergency designee, substitute staff member, or staff member, determines that the individual has not been sufficiently rehabilitated. An offender's completion of a period of five years after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent charge or conviction, is prima facie evidence of sufficient rehabilitation.
2. The department has determined that the offenses enumerated in subdivisions a and b of subsection 1 have a direct bearing on the applicant's, operator's, emergency designee's, substitute staff member's, director's, supervisor's, or staff member's ability to serve the public as an operator, emergency designee, substitute staff member, director, supervisor, or staff member.
3. In the case of a misdemeanor simple assault described in North Dakota Century Code section 12.1-17-01, or equivalent conduct in another jurisdiction which requires proof of substantially similar elements

as required for conviction, the department may determine that the individual has been sufficiently rehabilitated if five years have elapsed after final discharge or release from any term of probation, parole, or other form of community corrections or imprisonment, without subsequent conviction.

- ~~4. The school age child care center operator shall establish written policies, and engage in practices that conform to those policies, to effectively implement this section before hiring any staff member.~~
- ~~3. For purposes of subdivision b of subsection 1, the department in the case of a school age child care center, or the school age child care center operator in the case of an employee, shall treat completion of a period of five years after final discharge from any term of probation, parole, or other form of community correction, or imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.~~
- ~~4. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing upon an individual's ability to serve the public in a capacity involving the provision of child care services.~~
5. If the department determines that a criminal history record check, as described in North Dakota Century Code section 50-11.1-06.2, is appropriate, the department may excuse a person from providing fingerprints if usable prints have not been obtained after two sets of prints have been submitted and rejected. If a person is excused from providing fingerprints, the department may conduct statewide criminal history record investigation in any state in which the person lived during the eleven years preceding the signed authorization for the background check.

**History:** Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-06.1, 50-11.1-06.2, 50-11.1-07, 50-11.1-08, 50-11.1-09

**75-03-11.1-28. Child abuse and neglect determinations decisions.** If a probable cause determination or a decision that services are required An operator shall ensure safe care for the children receiving services in the school-age child care program. If a services-required decision made under North Dakota Century Code chapter 50-25.1 exists, indicating that any a child has been abused or neglected by a an applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, that individual decision has a direct bearing on the applicant's or operator's ability to serve the public in a capacity involving the provision of child care and the application or license may be denied



or revoked. If a services-required determination under North Dakota Century Code chapter 50-25.1 and under chapter 75-03-19 exists indicating that a child has been abused or neglected by the applicant, operator, director, supervisor, emergency designee, substitute staff member, or staff member, the applicant or operator shall furnish information satisfactory to the department from which the department may can determine the applicant's, operator's, director's, supervisor's, emergency designee's, substitute staff member's, or staff member's current ability to provide care that is free of abuse and neglect. The department shall furnish the determination of current ability must be furnished to the school-age child care center applicant or operator and to the regional director of the regional human service center or the regional director's designee for consideration and action of on the school-age child care center application or license. Each applicant, operator, director, supervisor, emergency designee, substitute staff member, and staff member shall complete a department-approved authorization for background check form no later than the first day of employment.

**History:** Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-04, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-04, 50-11.1-07, 50-11.1-08; 50-11.1-09

**75-03-11.1-29. ~~Allowable time periods for correction~~ Correction of deficiencies violations.**

1. Deficiencies Within three business days of the receipt of a correction order, the operator shall notify the parents of each child receiving care at the school-age child care program that a correction order has been issued. In addition to providing notice to the parent of each child, the operator shall post the correction order in a conspicuous location within the school-age child care program and applicable satellite location until the violation has been corrected or for five days, whichever is longer.
2. Violations noted in a correction order must be corrected:
  - a. For a violation of section 75-03-11.1-09, ~~subsection~~ subsections 3 and 20 of section 75-03-11.1-18, and section 75-03-11.1-23, within twenty-four hours.
  - b. For a deficiency violation requiring the hiring of a ~~school age~~ school-age child care center program director with those qualifications set forth in section ~~75-03-11.1-07~~ 75-03-11.1-08.1 or a child care supervisor with those qualifications set forth in section ~~75-03-11.1-09~~ 75-03-11.1-08.3, within sixty days.
  - c. For a deficiency violation that requires an inspection by a state fire marshal or local fire department authority pursuant to section 75-03-11.1-17, within sixty days.

- d. For a deficiency violation that requires substantial building remodeling, construction, or change, within sixty days.
  - e. For all other deficiencies violations, within twenty days.
- ~~2-~~ 3. All time periods for correction begin on the date of receipt of the correction order by the licensee operator.
  - ~~3-~~ 4. The regional supervisor of early childhood program licensing services may grant an extension of additional time to correct deficiencies violations, up to a period of one-half the original allowable time allotted. An extension may be granted upon application by the licensee operator and a showing that the need for the extension is created by unforeseeable circumstances and the licensee operator has diligently pursued the correction of the deficiency violation.
  - ~~4-~~ 5. The operator shall furnish a written notice ~~of to the authorized agent upon completion of the correction order~~ required corrective action to the county. The correction order ~~is effective~~ remains in effect until the ~~county receives the notice~~ authorized agent confirms that the corrections have been made.
  - 6. At the end of the period allowed for correction, the department or its authorized agent shall reinspect a school-age child care program that has been issued a correction order. If, upon reinspection, the department or its authorized agent determines that the school-age child care program has not corrected a violation identified in the correction order, the department or its authorized agent shall mail a notice of noncompliance with the correction order by certified mail to the school-age child care program. The notice must specify the violations not corrected and the penalties assessed in accordance with North Dakota Century Code section 50-11.1-07.5.
  - 7. If a school-age child care program receives more than one correction order in a single year, the department or authorized agent may refer the school-age child care program for consulting services to assist the operator in maintaining compliance to avoid future corrective action.

**History:** Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-07.1, 50-11.1-07.2, 50-11.1-07.3

#### **75-03-11.1-30. Fiscal sanctions.**

- 1. A The department shall assess a fiscal sanction of twenty-five dollars per day ~~shall be assessed~~ for each violation of subsections 3, 13, and 19 of section 75-03-11.1-20; and section 75-03-11.1-23 for each day

that the operator has not verified correction, after the allowable time for correction of deficiencies violations ends, ~~that the school-age child care center has not verified correction.~~

2. A The department shall assess a fiscal sanction of fifteen dollars per day ~~shall be assessed~~ for each violation of section 75-03-11.1-08; subsections 1, 2, 4, 5, 10, 17, and 20 of section 75-03-11.1-18; subsection 1 of section 75-03-11.1-19; subsections 3 and 11 of section 75-03-11.1-20; section 75-03-11.1-23; and subdivision a of subsection 1 of section 75-03-11.1-24 for each day that the operator has not verified correction, after the allowable time for correction of deficiencies violations ends, ~~that the school-age child care center has not verified correction.~~
3. A The department shall assess a fiscal sanction of five dollars per day ~~shall be assessed~~ for each violation of any other provision of this chapter for each day that the operator has not verified correction, after the allowable time for correction of deficiencies violations ends, ~~that the school-age child care center has not verified correction.~~

**History:** Effective June 1, 1995; amended effective July 1, 1996; July 1, 1996, amendments voided by the Administrative Rules Committee effective August 24, 1996; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-07.4, 50-11.1-08

**Law Implemented:** NDCC 50-11.1-01, 50-11.1-07.4, 50-11.1-08

**75-03-11.1-31. Appeals.** An applicant or operator may appeal a decision to deny or revoke a license by filing a written appeal with the department. The appeal must be postmarked or received by the department within ten calendar days of receipt of the applicant's or operator's written notice of such a the decision to deny or revoke the license. Upon receipt of a timely appeal, an administrative hearing must be conducted in the manner provided in chapter 75-01-03.

**History:** Effective June 1, 1995; amended effective January 1, 1999; October 1, 2010.

**General Authority:** NDCC 50-11.1-08

**Law Implemented:** NDCC 50-11.1-08, ~~50-11.1-09~~ 50-11.1-10



## **CHAPTER 75-04-05**

**75-04-05-01. Definitions.** In this chapter, unless the context or subject matter requires otherwise:

1. "Accrual basis" means the recording of revenue in the period when it is earned, regardless of when it is collected, and the recording of expenses in the period when incurred, regardless of when they are paid.
2. "Allowable cost" means the program's actual and reasonable cost after appropriate adjustments for nonallowable costs, income, offsets, and limitations.
3. "Bad debts" means those amounts considered to be uncollectible from accounts and notes receivable which were created or acquired in providing covered services that are eligible for reimbursement through medicaid federal financial participation.
4. "Board" means all food and dietary supply costs.
5. "Clients" means eligible individuals with developmental disabilities on whose behalf services are provided or purchased.
6. "Consumer" means an individual with developmental disabilities.
7. "Consumer representative" means a parent, guardian, or relative, to the third degree of kinship, of an individual with developmental disabilities.
8. "Cost center" means a division, department, or subdivision thereof, group of services or employees or both, or any unit or type of activity into which functions of a providership are divided for purposes of cost assignment and allocations.
9. "Day supports" means a day program to assist individuals acquiring, retaining, and improving skills necessary to successfully reside in a community setting. Services may include assistance with acquisition, retention, or improvement in self-help, socialization, and adaptive skills; provision of social, recreational, and therapeutic activities to maintain physical, recreational, personal care, and community integration skills; development of non-job task oriented prevocational skills such as compliance, attendance, task completion, problem solving, and safety; and supervision for health and safety.
10. "Department" means the North Dakota department of human services.
11. "Documentation" means the furnishing of written records including original invoices, contracts, timecards, and workpapers prepared to complete reports or for filing with the department.

12. "Extended services" means a federally mandated component designed to provide employment-related, ongoing support for an individual in supported employment upon completion of training, or on or off the job employment-related support for individuals needing intervention to assist them in maintaining employment. This may include job development, replacement in the event of job loss and, except for those individuals with serious mental illness, must include a minimum of two onsite job skills training contacts per month and other support services as needed to maintain employment. It may also mean providing other support services at or away from the worksite. If offsite monitoring is appropriate, it must, at a minimum, consist of two meetings with the individual and one contact with the employer each month.
13. "Facility-based" means a workshop for individuals with developmental disabilities licensed by the department to provide day services. This definition is not to be construed to include areas of the building determined by the department to exist primarily for nontraining or for production purposes.
14. "Fair market value" means value at which an asset could be sold in the open market in an arm's-length transaction between unrelated parties.
15. "Family support services" means a family-centered support service authorized for a client based on the primary caregiver's need for support in meeting the health, developmental, and safety needs of the client in order for the client to remain in an appropriate home environment.
16. "Generally accepted accounting principles" means the accounting principles approved by the American institute of certified public accountants.
17. "Historical cost" means those costs incurred and recorded on the facility's accounting records as a result of an arm's-length transaction between unrelated parties.
18. "Individual service plan" means an individual plan that identifies service needs of the eligible client and the services to be provided, and which is developed by the developmental disabilities case manager and the client or that client's legal representative, or both, considering all relevant input.
19. "Individualized supported living arrangements" means a residential support services option in which services are authorized for a client based on individualized needs resulting in an individualized ratesetting process and are provided to a client in a residence rented or owned by the client.

20. "Interest" means the cost incurred with the use of borrowed funds.
21. "Net investment in fixed assets" means the cost, less accumulated depreciation and the balance of notes and mortgages payable.
22. "Reasonable cost" means the cost that must be incurred by an efficiently and economically operated facility to provide services in conformity with applicable state and federal laws, regulations, and quality and safety standards.
23. "Related organization" means an organization which a provider is, to a significant extent, associated with, affiliated with, able to control, or controlled by, and which furnishes services, facilities, or supplies to the provider. Control exists when an individual or an organization has the power, directly or indirectly, significantly to influence or direct the action or policies of an organization or institution.
24. "Room" means the cost associated with the provision of shelter, housekeeping staff or purchased housekeeping services and the maintenance thereof, including depreciation and interest or lease payments of a vehicle used for transportation of clients.
25. "Service" means the provision of living arrangements and programs of daily activities subject to licensure by the department.
26. "Staff training" means an organized program to improve staff performance.
27. "Units of service" for billing purposes means:
  - a. In residential settings, one individual served for one 24-hour day;
  - b. In day service settings, one individual served for one hour; and
  - c. In extended services, one individual served for one hour of job coach intervention.

The day of admission and the day of death, but not the day of discharge, are treated as a day served for residential services.
28. ~~"Units of service in infant development" means, for billing purposes, one child enrolled for service Monday through Friday.~~

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; May 1, 2006; July 1, 2010.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01



**75-04-05-10. Reimbursement.** Reported allowable costs will be included in determining the interim and final rate. The method of finalizing the reimbursement rate per unit will be through the use of the retrospective ratesetting system.

1. Retrospective ratesetting requires that an interim rate be established prior to the year in which it will be effective. Providers are required to submit a statement of budgeted costs to the department no less than annually so an interim rate may be determined. The determination of a final rate for all services begins with the reported cost of the provider's operations for that fiscal year. Once it has been determined that reported costs are allowable, reasonable, and client-related, those costs are compared to the reimbursements received through the interim rate.
2.
  - a. Settlements will be made through a recoupment or refund to the department for an overpayment or an additional payment to the provider for an underpayment.
  - b. Interprovider settlements between intermediate care facilities for the mentally retarded and day services will be made through a recoupment or refund to the department from the day service provider to correct an overpayment; or a payout to the intermediate care facilities for the mentally retarded, for the day service provider, to correct an underpayment.
3. Limitations.
  - a. The department shall accumulate and analyze statistics on costs incurred by providers. Statistics may be used to establish reasonable ceiling limitations for needed services. Limitations may be established on the basis of cost of comparable facilities and services, or audited costs, and may be applied as ceilings on the overall costs, on the costs of providing services, or on the costs of specific areas of operations. The department may implement ceilings at any time, based upon the statistics available, or as required by guidelines, regulations, rules, or statutes.
  - b. Providers, to maintain reasonable rates of reimbursement, must deliver units of service at or near their rated capacity. Upon a finding by the department that an excess idle capacity exists and has existed, the cost of which is borne by the department, the provider shall be notified of the department's intention to reduce the level of state financial participation or invoke the cancellation provisions of the provider agreement. The provider, within ten days of such notification, must demonstrate to the satisfaction of the department that the department should not invoke its authority under this provision, or must accept the department's finding.

- c. Providers shall not be reimbursed for services, rendered to clients, which exceed the rated occupancy of any facility as established by a fire prevention authority.
- d. Providers of residential services must offer services to each client three hundred sixty-five days per year, except for leap years in which three hundred sixty-six days must be offered. Costs and budget data must be reported on this basis and rates of reimbursement will be established on the same basis. Providers may not be reimbursed for those days in which services are not offered to clients.
- e. Providers of day services must offer services to each client eight hours per day two hundred sixty days per year less any state-recognized holidays, except for leap years in which two hundred sixty-one days must be offered. The budgeted units of service for a full-time client will be equivalent to two hundred thirty days per year at eight hours per day.
- f. Services exempted from the application of subdivisions d and e are:
  - (1) Emergency services.
  - (2) ~~Infant development.~~
  - ~~(3)~~ Family subsidy.
  - ~~(4)~~ (3) Supported living.
- g. (1) Days of services in facilities subject to the application of subdivision d must be provided for a minimum of three hundred thirty-five days per year per client. A reduction of payment to the provider in an amount equal to the rate times the number of days of service less than the minimum will be made unless the regional developmental disability program administrator determines that a failure to meet the minimum was justified.
  - (2) For purposes of this subdivision, the fiscal year of the facility will be used, and all days before the admission, or after the discharge of the client, will be counted toward meeting the minimum.
- h. Salary and fringe benefit cost limits, governing the level of state financial participation, may be established by the department by calculating:

- (1) Comparable salaries and benefits for comparable positions, by program size and numbers served, and programs in and out of state;
- (2) Comparable salaries and benefits for comparable positions in state government;
- (3) Comparable salaries and benefits for comparable positions in the community served by the provider; or
- (4) Data from paragraphs 1, 2, and 3, taken in combination.

By using private funds, providers may establish higher salaries and benefit levels than those established by the department.

- i. Management fees and costs may not exceed the lesser of two percent of administrative costs or the price of comparable services, facilities, or supplies purchased elsewhere, primarily in the local market.

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 1995; April 1, 1996; July 1, 2001; July 1, 2010.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

**75-04-05-22. Staff-to-client ratios.** The following overall direct contact staff-to-client ratios shall form the basis for the determination of the rate of reimbursement for providers of service to individuals with developmental disabilities. Additional staff may be necessary to meet the needs of the clients and may be added subject to the approval of the department.

1. Intermediate care facilities for the mentally retarded shall be subject to the direct contact staffing requirements of 42 CFR 483.430.
2. Transitional community living facility shall maintain a one to eight direct contact staff-to-client ratio during those periods when the clients are awake and on the premises, and one direct contact staff when clients are asleep.
3. Minimally supervised living arrangements and providers of congregate care for the aged shall maintain one direct contact staff onsite when clients are present when required by the department.
4. In minimally supervised apartment living arrangements, one direct contact staff shall be onsite when clients are present when required by the department.
5. Supported living arrangements shall maintain a direct contact staff-to-client ratio of one to twenty.



6. Day supports shall maintain a direct contact staff-to-client ratio of one to five.
7. ~~Infant development shall maintain one service coordinator for every eleven children.~~

**History:** Effective July 1, 1984; amended effective June 1, 1985; June 1, 1995; July 1, 2001; July 1, 2010.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-16-10, 50-24.1-01

## CHAPTER 75-04-06

### **75-04-06-06. Developmental disabilities program management eligibility for three-year-old and four-year-old children.**

1. A child is eligible for developmental disabilities program management if all of the following conditions are met:
  - a. The child is three or four years of age;
  - b. The child has an autism spectrum disorder diagnosis confirmed by the autism spectrum disorder waiver evaluation and diagnostic team;
  - c. An autism spectrum disorder waiver slot is available; and
  - d. The child is or will be receiving a service through the autism spectrum disorder waiver.
2. If all of the above conditions are met, the child will be eligible for developmental disabilities program management until the child's fifth birthday, at which time developmental disabilities program management adult eligibility criteria will apply.

**History:** Effective July 1, 2010.

**General Authority:** NDCC 25-01.2-18, 50-06-16

**Law Implemented:** NDCC 25-01.2-02, 50-06-05.3

